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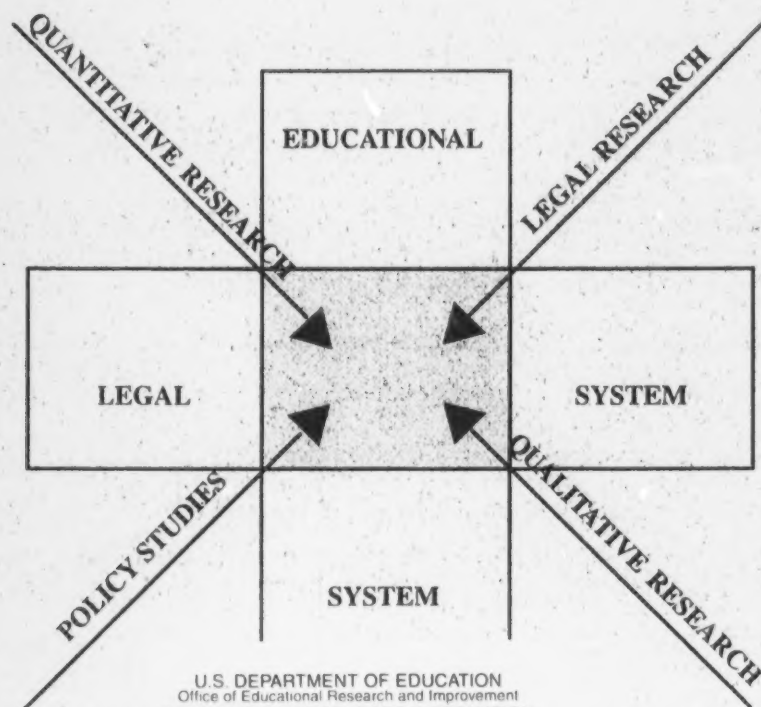
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ABSTRACT

Administrators, attorneys, and graduate students who are interested in law and education or in research methods will find this book useful. Rarely do researchers combine several methods for examining legal issues in education from multiple perspectives. Here four authors offer four different research methods that can be used in combination. Each author offers a rationale for his or her method, specific legal examples relating to controversial issues, and a bibliography. Each also explains the advantages and limitations of his or her strategy and how it compares to other methods. In the first chapter, Louise Adler examines the qualitative method, emphasizing why and how society creates specific laws. In the second chapter, Charles Russo delineates the traditional approach of asking exactly what the law is, based on statutes, cases, and other legal sources. In the third chapter, Grover Baldwin surveys the quantitative strategy. This can be described as using statistics to analyze data and the relationship between variables. Finally, Patricia First considers the policy-studies perspective, which uses multiple methods to analyze options and to provide comprehensive information to decision makers in their efforts to improve legal and educational policies. (Contains 67 references.) (RKJ)

RESEARCH THAT MAKES A DIFFERENCE: COMPLEMENTARY METHODS FOR EXAMINING LEGAL ISSUES IN EDUCATION



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No. 56 in the NOLPE Monograph Series

**RESEARCH THAT MAKES
A DIFFERENCE:**

**COMPLEMENTARY METHODS FOR
EXAMINING LEGAL ISSUES IN EDUCATION**

David Schimmel, Editor

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RESEARCH THAT MAKES A DIFFERENCE: COMPLEMENTARY METHODS FOR EXAMINING LEGAL ISSUES IN EDUCATION

Introduction

David Schimmel

University of Massachusetts, Amherst

This publication is designed for those who are interested in researching legal issues concerning education. Its purpose is to introduce a variety of complementary methods that can help researchers add greater depth, breadth and insight to their efforts.

Most research in education law uses only one method. Often it consists of comprehensive but relatively simple summaries of case law on a subject such as due process or search and seizure in public schools, or surveys of attitudes and knowledge of teachers or administrators about a Supreme Court decision or federal statute affecting education. Rarely do researchers combine several methods that would enable them to approach topics from multiple perspectives and with added depth and texture. Furthermore, we know of no book designed for education students and faculty that introduces them to the wide range of research methods available to study important questions in education law. We believe this monograph can meet these needs.

The monograph is designed for a diverse range of graduate students (and their advisers) interested in researching topics concerning law and education: from those in masters' programs to those considering doctoral dissertations. We also believe this work can be useful as a supplementary text for students in graduate courses in education law, for selected courses in research methods and for advanced seminars on law and education or educational policy studies.

In addition, the monograph should be of interest to attorneys and administrators concerned with education law. When lawyers and administrators share their districts' experience about what went right or wrong in developing and implementing a controversial policy, they typically use qualitative methods. When they generalize about a variety of policies or practices in their state, they are using quantitative methods. Through more conscious, systematic use of both of these approaches, lawyers and administrators can help develop policies that do more than avoid violating the law. Policies can be legal, yet unwise and unworkable. But the thoughtful use of research findings based on appropriate methods can help lawyers, administrators and other policymakers design practices and regulations that are educationally appropriate and administratively effective.

This monograph presents an introduction and overview of four complementary research methods. It begins with qualitative methods which explore why and how society, through its courts and legislatures, creates specific laws and the effects of these laws on the school community. The second chapter summarizes "traditional" legal research which asks "what is the law?" and identifies the various legal sources (such as statutes, cases and law journals) a researcher would use to answer this question. Chapter three looks at quantitative methods which typically use statistics to analyze data in answering questions of who, where, how many, and the relationship between variables. This controlled and focused approach may study actions taken in the past or the current status of a topic, and it may be used to determine comparative or cause and effect relationships on a legal question. The final approach, policy research, has a broad scope and often uses multiple methods to analyze options and provide comprehensive information to decision makers to help them make or improve legal and educational policies.

Our goal is to decrease research anxiety about each method, to "demystify" the method and to make it accessible to all graduate students. To help achieve these goals, each chapter will include five features: (1) a rationale for the approach; (2) its strengths and advantages as well as its limitations; (3) how it is similar to and different from the other methods; (4) education law illustrations about controversial issues such as school prayer or search and seizure; and (5) a brief annotated bibliography.

We hope that the use of these complementary methods to examine school law issues will enable readers to do research that can have intellectual breadth, educational significance and practical application.

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QUALITATIVE RESEARCH OF LEGAL ISSUES

Louise Adler
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Introduction

I have always been interested in the legal issues that grow out of our national efforts to implement the First Amendment. Even though I am now half a century old, I still remember the day in 1962 when the Supreme Court rendered its decision in the New York Board of Regents' prayer case (*Engel v. Vitale*). I can even remember the discussion among a group of neighbors as they stood at the side of our street about how the decision would lead to the moral collapse of the country. My support of the decision expressed with youthful vehemence was taken as evidence of the inevitability of their conclusion.

Many years later in graduate school, I became interested in a theory called "institutional isomorphism" (DiMaggio & Powell, 1983) which posits that organizations that exist in large institutionalized networks such as education deal with uncertain environments by copying each other. For my dissertation research, I wanted to find examples of this behavior in school districts. After exploring with my adviser a number of types of decisions school districts make, I decided to study districts' responses to religiously based challenges to their procedures. I reasoned that I knew something about how these issues played out from my prior service on a school board; I was very interested in the topic; and, because these decisions were made under very controversial circumstances, people would remember what they had done and why.

My adviser and I never made an explicit decision to use either a qualitative or a quantitative method to explore my topic. In fact, I don't remember ever using those words to describe my research. It seemed quite natural that the best way to find out how the decisions were made was to GO AND FIND OUT. I used reports of controversies in the newspaper and from People for the American Way to make a list of potential research sites. I then made some initial calls to get more information and to see if I could gain the access necessary to do the research. After carefully crafting a research proposal to do six case studies and compare them to "institutional isomorphism," I went to the districts to gather the data using interviews, observation, and document collection.

I felt very important during the plane flight to my first site as I explained my research to the person sitting next to me. Later I got lost

trying to find the district office in an unfamiliar rural area. As I got out of the rental car, I discovered that I had left my interview protocol in the motel room twenty miles away. I am sure that your research efforts will begin more auspiciously than mine did!

By now you are probably wondering when I am going to get around to defining qualitative research. I have been! First, qualitative research recognizes that the personal interest, talents, and skills of the researcher have an important impact on the research process and its outcomes. Rather than making a claim to rigid objectivity, qualitative researchers make the subjective involvement of the researcher explicit in reporting the research. So it is appropriate that I define how my interests as a researcher led to the way I defined the problem to be researched and selected a method. Second, qualitative researchers usually go themselves, as I did, to research sites to get the data. In a sense, they are the instruments by which the data are collected. Third, the data are usually collected in the form of words or text. Finally, the research report takes on a somewhat journalistic form such as the "story" I told you about how my own research began.

Some of my students have told me that they are definitely going to use a qualitative methodology because it will be much "easier" than dealing with the "dreaded statistics." What they overlook is that qualitative research may be equally difficult, but in a different way, particularly for students who have difficulty writing or who want to be told exactly how to conduct their research. Qualitative research requires that you have the ability to:

- deal with ambiguity,
- collect a lot of data,
- find the patterns and connections between all of the data yourself, and
- write the "story" presented by your data.

Thus, you will do as much or more work after you collect the data, as you did in the planning and data collection phases. This research approach should not be seen as an "easier alternative." In fact, qualitative research is a disciplined inquiry, in its own way, as rigorous as quantitative research. The conduct of the research and reporting of the findings must allow for careful examination by other scholars. "The report of a disciplined inquiry has a texture that displays the raw materials entering the argument and the logical processes by which they were compressed and rearranged to make the conclusion credible" (Cornback & Suppes, 1969, p. 16).

Overview of Chapter

The remainder of this chapter provides a comparison to other methods and an explanation of ethnography and case study. Other techniques fit

under the qualitative umbrella such as focus group interviews; but the goal here is to introduce the qualitative approach which developed originally in ethnography and case study. The chapter then moves to a discussion of the definitive features of qualitative research. Finally, the ways that this method can be used to complement other research methods when studying legal issues are discussed.

Comparison to Other Methods

Traditional legal research focuses on a particular topic and asks, "what is the law?" Past cases and law review articles may be explored to trace judicial reasoning. Also, specific laws related to a topic may be explored. This is, to be sure, vital information; but it is not all of the information that may be helpful to lawyers, school administrators, teachers, and students of school law. The law, as we know, is a social construction and is thus a reflection of our society. Qualitative research methods are ideally suited to exploring the questions of **WHY** and **HOW** society, through its courts and legislative bodies, has created specific laws. Knowledge of the **WHY** and **HOW** is crucial to those who must carry out laws in a democratic society. Also important are questions about the effects or consequences of the law which can be both intended and unintended. For example, we know that the *T.L.O.* decision (*New Jersey v. T.L.O.*, 1985) established the "reasonable suspicion" standard for school searches that is a more lenient standard than "probable cause," the traditional standard. Quantitative research might tell us how many searches have been conducted using this standard, but qualitative research could tell us how this standard has been implemented.

Every research approach—traditional legal research, quantitative, qualitative, and policy research—has a particular history and tradition and is uniquely suited to particular research questions or problems. All of the approaches have value in studying the legal issues that surround education in the United States. Perhaps one way to differentiate between the approaches is to distinguish the scope of the territory each proposes to investigate. Legal research in education covers: (a) those formal acts of government that shape public education, (b) legal cases that involve education agencies, and/or (c) development of legal precedents.

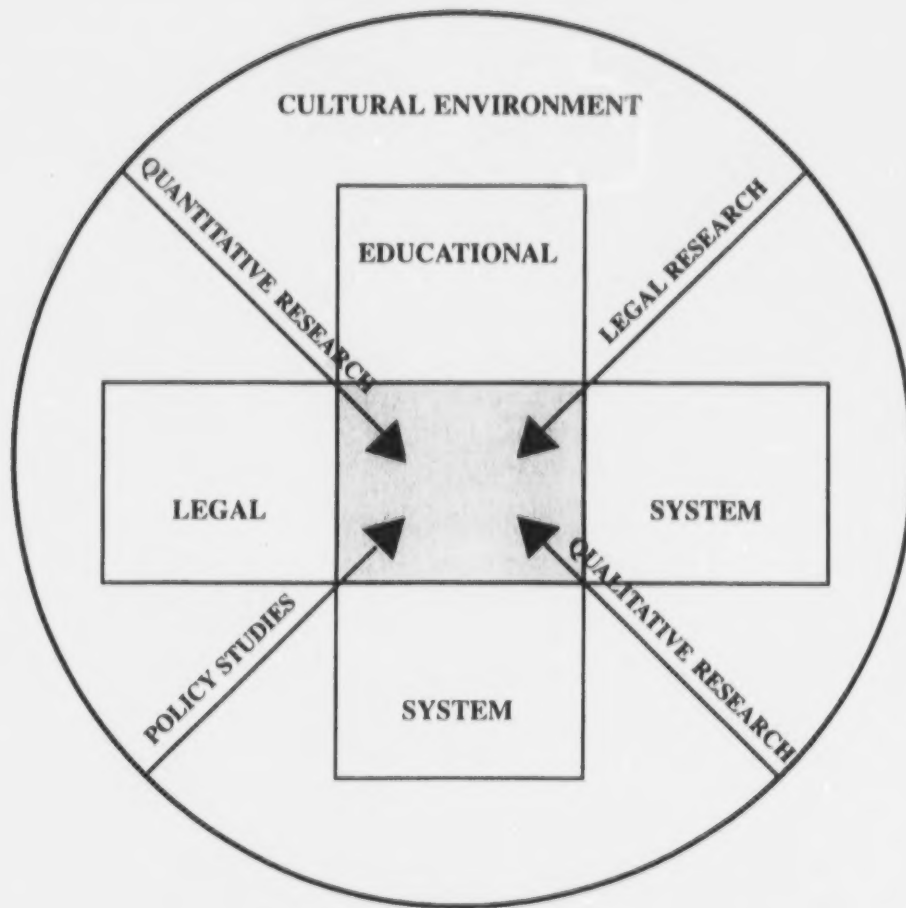
Quantitative approaches use statistics to analyze data in answering questions of who, where, how many, how much, and what is the relationship between specific variables. Questions about the most common types of cases involving public schools are a good example of research that uses quantitative methods—counting cases and the outcomes. The quantitative approach usually starts with a clearly stated hypothesis (e.g., a

school administrator is more likely to conduct a search if the student involved is from an ethnic group that is different from the ethnicity of the administrator, or urban school districts are more likely than rural or suburban school districts to comply with Supreme Court school prayer decisions). Thus, the scope of the research is carefully narrowed to control which variables are studied. In quantitative studies hypotheses are tested using a data gathering instrument such as a survey or questionnaire.

Policy studies have a broader scope in the range of questions asked than do traditional quantitative approaches. Policy studies use both quantitative and qualitative methods, but the focus is on specific sets of public policy options and is evaluative in nature (e.g., what procedures should school districts establish regarding searching students and their possessions?).

Qualitative research uses a variety of methods—interview, observation, review of documentary data—to explore questions of why and how. The broad scope of the approach is criticized by some, but it is also the source of its value. The focus in this approach is on in-depth interaction with the people or events to be studied. This approach assumes that events in social settings are complex and require attention to the context of the people or events to be studied. While the quantitative approach deals with the figure-ground problem¹ by focusing only on the figure (attempting to focus only on a carefully delimited hypothesis), the qualitative approach is very much concerned with the interaction between the “figure and the ground” (between the culture or context and the group or events being studied). For example, a quantitative approach might ask, “are the number of cases involving student free expression increasing or decreasing?” The qualitative approach would go further and ask, “why are the number of cases increasing or decreasing,” and “how are school districts responding to the increase or decrease in the number of cases?” Qualitative approaches cross the boundaries between various institutions and the social and cultural contexts in which they exist to tell a story of why things happen. The arrows in Figure 1 illustrate the scope of the various research approaches, not their relative value or importance.

Figure 1 **Scope of Research Approaches**



Definitive Features of Qualitative Research

All of the qualitative approaches use words as a form of data. But, that is not to say that numbers are never used as descriptive tools. "Qualitative data are usually reduced to themes or categories and evaluated subjectively" (Rudestam & Newton, 1992, p. 31). The emphasis is on using description to develop "categories for understanding human phenomena and the investigation of the interpretation and meaning that people give to events they experience" (Polkinghorne, 1991, p. 112). Qualitative research assumes that what is learned by researchers as they conduct the study will shift what is studied and how the study is conducted; thus, it is evolutionary.

This tradition began with anthropological and sociological approaches and maintains a sense of spontaneity that has grown out of its early history in fieldwork. The research instrument is the researcher who collects the data rather than a test, experiment, or questionnaire. The researcher observes the events in the natural setting. It is standard practice for qualitative researchers to use multiple sources and methods of data collection to investigate the same group or event (e.g., interviews, observations, documents, survey results). The researcher uses a variety of sources to ensure that conclusions are accurate. Thus, researchers triangulate to assure the validity of their findings.

Rudestam and Newton (1992) point out that there is great variety in qualitative approaches, but that they all rest on three assumptions:

- Qualitative methods seek to understand phenomena in their entirety in order to develop a complete understanding of a person, program, or situation.
- The researcher does not impose much of an organizing structure or make assumptions about the interrelationships among the data prior to making the observations.
- It is a discovery-oriented approach in the natural environment (p. 32).

Philosophy of the Research Design

Ethnography is a broad category that is often used to describe a good deal of qualitative research. Historically, ethnography was where qualitative research began and, thus, is the foundation upon which later varieties of qualitative research were constructed. It is based on the classic field research methods developed in anthropology used to picture a way of life of a group of people. It focuses on how people make sense of their lives. Whatever the focus of their research, ethnographers are concerned with the cultural context of the behavior they are observing (Wolcott,

1988). The goal of ethnography is to be holistic (Fetterman, 1989). That is, it uses a "wide angle" lens to capture a broad picture of the group or program under study. For example, an ethnographic study of search and seizure practices by school administrators in a particular school district would focus not only on the administrators or the legal cases, but would also explore the impact of the local cultural beliefs and practices. One such issue might be how gender roles are defined in various subcultures in that community and their impact on the acceptability of student searches among various ethnic groups.

Ethnography is defined as naturalistic because it gathers data from natural settings without trying to manipulate what is under study as one would in an experimental design. To put it simplistically, rather than putting a rat in a maze to discover the strength of its desire to acquire food, a naturalistic design would follow the rat around in its natural habitat to discover how it satisfied its hunger. However, it would be inaccurate to assume that ethnographers only study groups that exist in what we sometimes call "natural" settings meaning places like "primitive islands," such as the work done by Margaret Mead in Samoa. In fact, a good deal of ethnographic study is done in "modern" organizations or programs. Ethnographic fieldwork is also done in very urban settings. Lightfoot's study of "good" high schools (1983) is a well-known example of ethnography which contained studies of urban (as well as other) high schools. Other good examples of ethnographic research of American education are Peshkin's study of a fundamentalist Christian school (1986) and a similar study done by Rose (1988) of two different types of Christian schools.

Rather than starting with a hypothesis which is to be tested and proven or disproved, the ethnographer starts with some general questions. For example, how are school districts in different parts of the country responding to the *Lee v. Weisman* decision on prayer at high school graduations? After visiting various sites and gathering data, the ethnographer searches for common patterns and overarching explanations which grow out of the data rather than stating a hypothesis at the start of the study. Thus, the ethnographer works inductively (Locke, 1987). Glaser and Strauss (1967) called this process "grounded theory" because the theory is grounded in the data and emerges as the data are collected and analyzed.

Wolcott (1988) argues that not every researcher who claims to be "doing ethnography" is actually producing an ethnography: "...it [is] useful to distinguish between anthropologically informed researchers who do ethnography and educational researchers who frequently draw upon ethnographic approaches in doing descriptive studies" (p. 202). For example, just because a researcher includes data obtained from "observing events" does not mean that she is automatically doing or writing "ethnog-

raphy." As you will see in the brief discussion which follows, "doing" ethnography requires a good deal of time at field sites (perhaps as long as one year or long enough to observe "a full cycle of activity") (Wolcott, 1988, p. 188). Thus, it is more likely that you will incorporate "ethnographic approaches" in your study of legal issues.

Doing ethnography requires that the research:

- start with a question that is phrased in ethnographic terms (phrased as a search for information rather than as a hypothesis);
- use field study techniques (observation, interview, document and artifact collection); and
- make a clear connection between the data and a cultural explanation in the report ("subjects respond in this way because of these cultural characteristics").

Thus, ethnography is much more than a set of techniques for gathering data. The written ethnographic account is not a verbatim transcript of every observation, interview, or document. The written report must make the "story" of the group, institution, or program understandable to others. "The ethnographer's task is not only to collect information from the emic or insider's perspective, but also to make sense of all the data from an etic or external social scientific perspective" (Fetterman, 1989, p. 21). Bates' (1993) recent book about the textbook controversy in Hawkins County, Tennessee, is an excellent example of the use of ethnographic data. The book explores not just the surface events but the historical and social context that surrounded the confrontation.

Issues of Subjectivity

Empirical research begins with a hypothesis based on a particular theory. But, even the most rigorously empirical research involves a subjective decision by the researcher that a particular study should be conducted. The history of science is replete with stories of the impact of scientists' intuition. It would be impossible to separate entirely our human qualities from the research that we conduct. In fact, many have argued that there is great danger in the assumption that research can be conducted in a value-free atmosphere. It is our human judgment which is necessary to make decisions about the ethical implications of how we conduct and report research.

When ethnographic researchers go to sites to collect data, they bring with them their own biography including values, physical appearance, preferences, language and all the other complex personal traits that make

them human. Thus, their biography impacts on how the data are collected and analyzed. Ethnographers usually try to adapt, where they can, to the customs of the site. Peshkin adjusted his attire to ease his access to the Christian school site he studied. I once changed out of a black suit before interviewing a parent concerned about the influence of witchcraft on the public schools. But, researchers are not expected to change their beliefs, interests, and attitudes.

In ethnographic research, the issue of researcher bias or subjectivity is addressed in the proposal development stage when researchers "come clean" by explicitly analyzing potential subjective impacts on the research that arise out of their personal histories. Then as the research progresses, the researchers make a conscious effort to be aware of the impact of their own subjectivity (Peshkin, 1988).

Because of the unique character of each ethnographer, questions of reliability are not addressed in the same way as they would be in quantitative research. If one uses a quantitative method with a limited number of variables, it would be expected that if another researcher repeated the steps in the study the results would be the same. But in ethnography the research can never be repeated in exactly the same way. Concepts such as "dependability" or "consistency" seem to be more useful as tests of ethnographic research. "Rather than demanding that outsiders get the same results, one wishes outsiders to concur that, given the data collected, the results make sense—they are consistent and dependable" (Merriam, 1988, p. 172).

The presence of the researcher has the potential to impact on the events being observed. Ethnographers attempt to deal with this problem by visiting a site for extended periods of time. But, they must also deal with their own impulses to become full participants in the events being observed. This is like the "prime directive" from *Star Trek* that the crew must not intervene to change the planets that they study. There is a good deal of discussion among researchers about "how far one can or should go" and still be an ethical researcher. A continuum exists with nonresponsive observation on one extreme and full participation on the other. "Participant observation characterizes most ethnographic research and is crucial to effective fieldwork. Participant observation combines participation in the lives of the people under study with maintenance of a professional distance that allows adequate observation and recording of data" (Fetterman, 1989, p. 45).

Doing ethnographic research in your "own back yard," at your own work site, or in your own community presents a number of difficulties. My own experience is that you are so fully a participant in these situations that it is very difficult to take adequate notes and to separate roles as an active participant and a researcher. It is also difficult to report the results

of such a study and at the same time protect the anonymity of sources. One of my own students who did a "back yard" study finally opted to have her master's project "sealed" because there was no way to simultaneously report the data accurately and to keep her job.

Ethnographic Techniques

Ethnographic study happens "face to face" using techniques such as participant-observation and interviewing. Ethnographers also review written sources and collect nonwritten sources such as pictures, maps, and artifacts (e.g., school yearbooks, maps of schools, items confiscated in searches of students, videotapes from security cameras). Ethnography done in settings that are new to the researcher present problems of gaining access and becoming familiar with the "lay of the land," but it also has the advantage that what is observed will be seen with "fresh eyes." It is more difficult to separate ourselves from our own preconceived notions when studying American schools since we already have a good deal of personal experience in schools. We may miss interesting and new connections or concepts because we "don't see the forest because of the trees." For example, if we approach issues of search and seizure in a traditional way, we may only study the actual events that preceded the search to determine if there were reasonable suspicion and the events of the search to see if due process were followed. We might miss entirely other interesting information like the fact that all of the students searched were of a particular gender or subculture, or that similar events resulted in different outcomes because a particular group of parents were more or less likely to challenge searches of their children. Qualitative research might provide information about how the search was conducted, particulars as to school district guidelines on searching, and how invasive the search was.

The process of "observation" means much more than watching what happens. It means watching with a purpose to gather data that will address the research questions. Access to the site should be requested in advance unless it is open to the general public. Careful note taking with as much detail as possible is critical. In some settings, things like tape recorders and cameras may aid this process. You will also need the help of one or more "insiders" to gain a better understanding of events. Observation, like any other technique, improves with practice and the assistance of someone with experience using the technique; and there are books and articles that will assist you in developing this technique.

There are a number of kinds of interviews (key informant, life history, structured, informal, and questionnaires). Interviews are an opportunity to learn about events you cannot observe or to gather information about opinions and perceptions. Key informants are "insiders" who have agreed

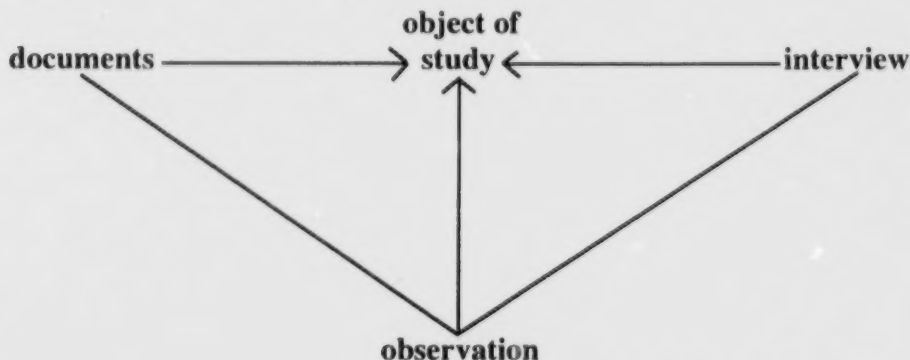
to help you with your research. They are the ones who will give you the "lay of the land." Structured interviews are used to gather specific information and are usually used after the researcher has studied the site long enough to develop some notions that they want to test or explore. Informal interviews can take place serendipitously in the course of visits to a site. Something you see or hear may cause you to ask questions of someone who is near at hand. These discussions may happen as you walk to the parking lot or near the soda machine. Also, skilled researchers know that often the best information is provided after periods of silence when they ask "what else" or say "tell me more" (Glesne & Peshkin, 1992). Interviewing is a craft that improves with practice and coaching. Questionnaires are used when it is not possible or advisable to speak directly to the people who have the data you need. An ethnographer would usually not depend only on data gathered from a questionnaire.

If one wanted to know why cases involving search and seizure were either increasing or decreasing in number, the researcher could interview people such as student leaders, principals, school security officers, superintendents, or leaders of special interest groups such as the ACLU to gain information about why the number of cases was changing.

Triangulation

Being at a site allows the researcher to observe, to interview people, and to obtain records and artifacts. Each of these sources of data can be used to corroborate data gained in a different way (see Figure 2). "Good research practice obligates the researcher to triangulate, that is, to use multiple methods, data sources, and researchers to enhance the validity of research findings" (Mathison, 1988, p. 13). Triangulation should provide a richer and more complex description. Thus, an ethnographer will use several fieldwork techniques to gather data and may collect data from various sources such as parents, administrators, teachers, and students.

Figure 2 **Triangulation of Methods**



Writing Ethnography

Verbatim quotations are very common in ethnographic reports because they are the raw data and convey the information in the "voice" of the subjects of the study. They also allow the reader to "hear" the data directly from the source and to judge the validity of the ethnographer's interpretation.

Writing an ethnography involves not just reporting or describing the data, but it must also be a "cultural interpretation" of how it all makes sense to those involved (Wolcott, 1988, p. 200). Because the data in ethnography are usually in the form of words, it takes good writing skills to present the data in an interesting way. It is of paramount importance that there must be a clear connection between the data and the interpretations. Sufficient details must be presented to support and explain the interpretations. Ethnographers call this kind of writing "thick description." "Description that goes beyond the mere or bare reporting of an act (thin description), but describes and probes the intentions, motives, meanings, contexts, situations and circumstances of action" (Denzin, 1988, p. 39). Thus, thick description includes analysis as to why events occur as this passage from Bates (1993) illustrates:

As with administrators, though, most publishers simply wanted to steer clear of controversy. "Anytime you have anything of a controversial nature in a textbook business, it gets around pretty fast," says Harry Hall, the regional Holt salesman who sold the reading series to Hawkins County. "As the school people start making decisions, whether or not it's something that might sway them one way or the other, I'm sure it's in the back of their minds." While choosing reading textbooks, administrators in other school districts phoned Hawkins County to ask about the conflict over the Holt readers, according to administrator Joe Drinnon.... (p. 209)

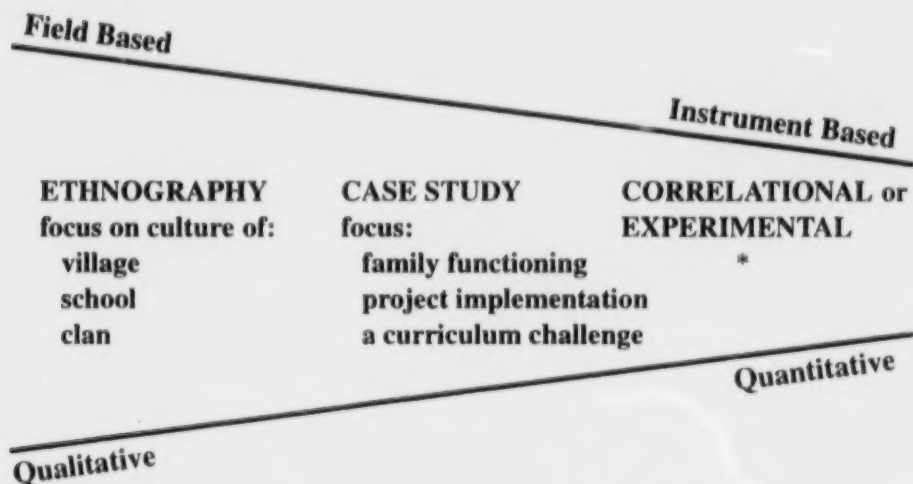
Narrowing the Focus

If the preceding discussion suggests to you that doing "classic" ethnographic research requires a good deal of training, you have made a sound conclusion. However, it was not meant to suggest that ethnographic techniques such as interviews can only be used by trained ethnographers. Ethnography is also daunting for graduate students in fields outside of anthropology because of the scope of the research. A good deal of time is needed to conduct a study of the culture of a group or organization. However, this type of research can be made more manageable by narrowing the focus to: (a) a specific program (e.g., types of training for administrators on student searches), (b) a change in an organization (e.g., instal-

lation of metal detectors), (c) or how a group of people is responding to specific events (e.g., a rural district's response to *Lee v. Weisman*).

Whereas, early anthropologists studied all of the people at a given physical location such as a village, tribal territory or island, early sociologists focused on a specific social unit. In the late 1800s, Le Play studied working-class families throughout Europe by developing over 300 case studies of individual families (Hamel, 1993). Thus, the focus of the research was narrowed by the sociologists doing case studies; though, they continued to use fieldwork techniques such as observation, interview, and review of documents (see Figure 3).

Figure 3 **Scope of Research**



*Discussed in chapter on quantitative studies.

Case Study Research

Defined

Even though quantitative methods can be used to gather data for case studies, the overall approach of the case study method is predominately qualitative. Case study is a process which begins with description, develops understanding, and results in an explanation of a specific event or phenomenon as it unfolds over a period of time.

Yin (1989) has defined case studies as having these characteristics:

- complex social phenomena are studied (p. 14),
- relevant behaviors cannot be manipulated (p. 19),
- a contemporary phenomenon is investigated within its real life context,
- boundaries between phenomenon and context are not clearly evident,
- multiple sources of evidence are used (p. 23).

Case study researchers use "context" in much the same way that ethnographers use "culture." Both are considered very important in the research and result in collecting data about the relationship between what is being studied and its surroundings. "Context" as it is used by the case study researcher could include cultural, social, economic, geographic, historical, or other factors that may impact on the entity being studied. For example, Hazi (1992) reported that she "nested" the story of a teacher who brought a legal case to challenge the Florida Performance Measurement System in its particular context—"school reform within Florida and the specific practices of teacher evaluation and supervision" (p. 261).

This methodology should not be confused with "studying cases" or "briefing cases" in legal research. A more appropriate analogy would be the use of case studies in medicine or psychology where all the aspects of a patient's life are explored to better understand a medical or psychological problem. Once the "case" is defined, a holistic approach is taken to describe and analyze all factors that impinge on the case.

Interestingly, the works by Peshkin and Lightfoot which I discussed as examples of ethnography are also cited as examples of case study research. Obviously, these are viewed by some as case studies developed using ethnographic methods. The classic study by Berman and McLaughlin (1978) of the implementation process of educational innovations is also an example of the use of case study research. They used both qualitative and quantitative data in their case studies undertaken from 1973-78 which focused on the effects of a variety of federal programs implemented in 293 local projects designed to bring about educational change.

Merriam (1988) has argued that case studies are often the method of choice if one is attempting to improve practice in education. She points

to the usefulness of this method in conducting program evaluations and for informing the policy process. The study of the implementation of educational innovations (Berman & McLaughlin, 1978) is a good example of a study that has served the purpose of both program evaluation and informing policy development.

Case study research has been used to study phenomena such as "organizational performance, policy interventions, project implementation, [interorganizational] relationships, and program development" (Yin, 1993, p. 114). For example, the case study method could be used to study the way in which several urban school districts have responded to security problems by using techniques such as metal detectors and locker searches which have important Fourth Amendment implications.

In order to use a case study method, the researcher must be able to clearly define the boundaries of the case or cases. Is the case or focus of the research a program, a decision process, a school, a group of students, an event, or some other entity? Case study researchers call this defining a "bounded system" (Merriam, 1988) "...a single actor, a single classroom, a single institution, or a single enterprise" (Stake, 1988, p. 256).

Generalizability

Questions have been raised since the early use of this method in sociology about the extent to which the results of a case study can be applied beyond the specific study. A famous "academic war" was waged during the 1930s over this point between the Sociology Departments of the University of Chicago (where case studies were first developed in the United States) and Columbia University (which favored a more statistical approach) (Hamel, 1993). One way to address this issue is to select a single group or phenomenon which is representative of the whole as the object of study. Thus, selection becomes a critical step in the research design which must be clearly justified in the reporting. Hamel (1993) draws an analogy between a single carefully selected case study and an experimental prototype which is used in so called "hard" science to test in miniature the properties of the large scale application of a theory. To be successful using this technique, the researcher must show that the characteristics of the global population are concentrated in the local object of the case study—a difficult task. However, another option available to the researcher is to avoid claiming that the results are generalizable. This latter position is usually the one taken in purely descriptive single case studies. However, while actual results may not be generalizable; patterns or themes which are identified may be generalizable to other settings.

Research Design

Case study design may be for a single case or for multiple cases. However, Yin warns that selection of multiple sites should not be seen as a "sampling" process (as used in quantitative studies) but rather as a process of replication in an attempt to search for similar patterns across multiple cases.

It is possible to study an issue such as graduation prayers using either a single case study or multiple case study design. Both types of studies will yield valuable but somewhat different results. While a single case study may be criticized because it does not cover more than one site, it may be an outstanding study because it is used either to generate an important grounded theory or to test existing rival theories. On the other hand, selection of sites from around the United States would provide information about whether the response by districts varied across the country.

Both Merriam (1988) and Yin (1993) define three categories of case studies, but not the same categories. These are summarized in the chart below.

Types of Case Studies

YIN	MERRIAM	SAMPLE RESEARCH QUESTION	AUTHOR'S DEFINITIONS OF TYPES OF CASE STUDIES
Exploratory	Interpretive	What factors influence a school district's decision to comply with or challenge a court decision prohibiting prayers at graduation ceremonies?	Fieldwork and data collection are done before the final definition of the study questions and hypothesis (Yin, 1993). Used to develop categories or generate theory, "or to illustrate, support or challenge theoretical assumptions held prior to data gathering" (Merriam, 1988, p. 28).
Descriptive	Descriptive	How have school districts responded to the <i>Lee v. Weisman</i> decision?	Describes an individual, organization or other phenomenon.
Explanatory		Will the <i>Lee v. Weisman</i> decision decrease the intensity of controversies over prayers at graduation?	Deals with cause and effect relationships. A hypothesis is stated before data are collected.
	Evaluation	How effectively have school districts managed controversy about graduation prayer?	"Involves Description, explanation and judgement" (Merriam, 1988, p. 28).

Yin also discusses the time period of the field study portion of the research pointing out that decisions must be made whether to visit a site for a short period (perhaps over several days) or for longer periods so that longitudinal data can be collected. Decisions about the way to select sites, the type of report desired, use of single or multiple sites, and the length of time to be spent at the site should be made only after you have reviewed some of the source materials provided at the end of this chapter and have carefully considered the resources needed to carry out various types of studies.

Analysis

All case studies are a search for patterns, either within a single case or across multiple cases. For my own dissertation, I used a case study method to investigate how six school districts responded to challenges to curriculum from community members. The "case" was a specific challenge in each district. The case study for each challenge included data gathered from reviewing district documents and news accounts, interviewing staff members and parents, and on-site observations. Cases were compared to determine the elements that were common across the cases (cross case analysis), and then I compared the cases to the theory of institutional isomorphism (e.g., districts relied on professional associations for standardized policies) (Adler, 1990). Yin suggests that analysis of explanatory studies can use this technique of pattern-matching "whereby several pieces of information from the same case [or cases] may be related to some theoretical proposition" (Yin, 1984, p. 33). Use of this technique should be carefully spelled out in the writing of the research proposal prior to data collection.

Case study design requires the use of multiple sources of data or evidence. Yin argues that since no instrument is completely accurate, use of multiple measures is desirable: various types of interviews, quantitative analysis of preexisting data, and field observations. And, Merriam (1988) argues that, "the opportunity to use multiple methods of data collection is a major strength of case study research" (p. 69). Thus, a variety of data collected in different ways is used to "triangulate" (see Figure 2).

In addition to triangulation, case study researchers use other methods to ensure the internal validity of their findings. For example, once field notes and other sources are coordinated to create a case record, that record can be reviewed by key informants at the site(s) studied so that they can verify the accuracy of the description of events and chronology. Only after the researcher is satisfied that he has the most accurate data it is possible to collect, should the effort to write the case study begin.

Writing Case Studies

As with ethnography, the writer of a case study must provide enough details to be accurate and complete but not so much that they overwhelm

the reader. Judgments must be made about how to organize the presentation of data so that it supports the conclusions drawn. One of the best ways to learn how to write a case study is to read outstanding examples. Allison's (1971) work is an early classic in which he analyzed the Cuban Missile Crisis. Grant (1988) describes his study of a high school as a sociologically informed history, and it appears to me to fit the category of a historical or sociological case study.

Steps in Doing Qualitative Research

Planning

When you plan your research effort, you or your adviser may discover that there are aspects of your research question that cannot be addressed by traditional legal research about the law. If the information you are seeking is about how or why legal events take place, you should consider using a qualitative method in addition to traditional legal research. The first step is to determine that the information you seek could best be found using a qualitative method. Second, you will have to read enough about the methods so you can select an appropriate one and assure that you can competently apply the method. Identifying a mentor who is skilled in the use of this method is also valuable, even if she is not an expert on your research topic. Third, you must approach this type of research with the mindset that is inductive rather than deductive.

Fourth, you must specify in writing the research procedures that you will implement and how you will address the potential for researcher bias to influence the outcome. Outline all of the procedures that will be used to gather and analyze your data. You must provide evidence that you are using sound research techniques. To make this argument successfully you will need to make reference to experts on the particular methodology you select. You must also demonstrate that you have solutions to problems typical of qualitative research such as how to gain access, how to define the boundaries of the study, and how to accurately record the data. I view the research proposal as a contract. If a student executes the terms of the proposal/contract, he can be assured that I will support his research efforts. However, if the proposal is vague, the student may find that he has much more work to do than expected.

Data Collection

Only after careful planning, and with the approval of your adviser, should you finally gather the data. A variety of data collection methods are used in qualitative research such as observation, document and artifact analysis, open-ended questionnaires, interviews, and focus group interviews. It is critical that the predetermined procedures outlined in the

proposal be followed. However, because of the iterative² nature of qualitative research, this should not be seen as a rigid process. Insights gained as you gather data can be used to revise the research procedures. Further, you may build into your plan a process whereby a short series of open-ended interviews or observations will be used to develop a more rigid research instrument which can then be used as a second stage of the research. You may also find that your plans need to be adjusted once you begin to gather data. Perhaps all of your previous reading on a topic failed to disclose an important issue that you discover once you start to collect data. You may then want to "re-negotiate" the proposal to include this new issue.

Data Analysis

In many cases, the most time consuming step in qualitative research is to analyze the data. However, you will begin this process as you collect your data. You will no doubt begin to see patterns in the data you are collecting. As you collect the data make note of these ideas about interconnections or patterns. Some people structure the analysis of the data by the way that they design an interview protocol or other instrument that is used in the field. Others find it useful to make charts on large sheets of paper that can be hung up and filled in with notes as the research progresses such as the one illustrated below.

	CASE A	CASE B	CASE C
Characteristic one			
Characteristic two			
Characteristic three			

Other people find it easier to go back through their notes and use various colored highlighters to "code" similar information in the various cases. There are also computer programs that can be used in doing qualitative analysis to textual data.

Reporting/Writing

Telling the story presented by your data requires skillful use of language. The use of literary techniques such as metaphor is very helpful in writing about qualitative research. The writing process often brings the researcher a deeper understanding of the meaning of the data; thus, it

is critical that editing and rewriting be given as much attention as any step in the research process. Obviously, computer-based word processing makes this a much more efficient process. One of my advisers told me that if I could reduce my findings to a flow chart or model, I would be sure that I understood my results and would be able to write more succinctly.

Use of Qualitative Research to Study Legal Issues

If you were going to conduct a case study on the implementation of the Supreme Court's prayer decisions, for example, you could begin by doing traditional legal research to define the parameters of those decisions. Then, you would have to select a site for the case study and define its boundaries. Will you explore implementation at only one site or multiple sites? What will the characteristics of the site be (urban, rural, suburban; social and economic levels; racial balance)? What type of case study will you be doing (exploratory, explanatory, descriptive)? Next, you would have to gain permission to spend time at the site doing interviews, observations, and gathering documents. Only after you had assured yourself that you understood the case study method well enough to gather the necessary data would you actually visit the site. Careful recording of the data and its subsequent analysis are also critical and perhaps the most difficult steps in doing a quality case study.

If the primary focus of your research project is to do traditional legal research, qualitative data can supplement your work. For example, you might want to use press reports and letters to the editor to illustrate the public reaction to particular decisions. Or, for a particularly interesting case, you might want to speak by phone to key players such as the attorneys who argued the case or the plaintiff. They might give you valuable insights that would enhance your analysis of the case.

Examples of legal research questions that might appropriately use a qualitative approach:

- What types of contextual (cultural, economic, political) factors tend to result in legal action to challenge the activities of school administrators or teachers?
- Why do communities respond differently to the use of similar procedures such as the use of dogs to search for drugs or ending use of prayers at graduations?
- What is the impact of gender roles on the acceptability of various procedures among different ethnic groups (women administrators searching male Hispanics, or male coaches of girls' sports teams)?
- How do school administrators develop policies and implement prac-

tices after a landmark U.S. Supreme Court decision or after passage of a significant school-related federal law?

As we all know from experience, school districts can take exactly the same legal steps and the results will be quite different. Why do parents in one community object to asking students to empty their pockets while parents in another community demand that rather invasive procedures such as the use of drug sniffing dogs be used? Qualitative researchers focus on the cultural, community, and social contexts that cause these differences in outcomes. It is important that school leaders know more than what the law is. They must also know how their specific community will respond to the application of the law. School attorneys must be able to clearly define the limits of the law, but they often go on to tell school leaders about events that occurred in other districts in similar circumstances. Their descriptions are oral ethnography or case studies that go far beyond description of legal precedents. They recognize that school leaders need information about how legal issues have interacted with the social and cultural circumstances of other communities in order to prepare for the reaction of their own community.

In a similar manner, legal researchers can expand the utility of the information they present by attending to questions of why something is the law and how various cultural, economic, and political factors impact the way the law is implemented. To access this wider array of data, researchers need to use a variety of techniques—traditional, quantitative, and qualitative.

It is not uncommon, however, for the faculty of a particular graduate institution to develop an affinity for a particular type of research. This then impacts on students as they are “guided” to select preferred topics and methods of study. Opposing this practice, Eisner (1988) has argued that “all methods and all forms of representation are partial and because they are partial, they limit, as well as illuminate what through them we are able to experience” (p. 19). Essentially, the argument made here is that this weakness which is inherent in the design of each specific method can be mitigated by using more than one method to study the legal issues in schools.

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FOOTNOTES

¹ The figure-ground problem is a metaphor taken from the visual arts to describe the problem a person has distinguishing a figure from its context (e.g., being able to see a specific tree in a forest).

² The term iterative used here indicates each stage in the research process builds on the insights gained in the prior stages. One might repeat a prior step in the research to explore a theme or issue that has emerged as the research progressed. For example, one might call back a person previously interviewed to explore an issue raised in a subsequent interview with another subject.

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This 150-page paperback book is a comprehensive and readable introduction to ethnography. It is also a useful guide for the student who is attempting to incorporate ethnographic techniques into their research design. In addition to dealing with the major issues in the field, it contains very practical information on the use of computers and other equipment.

Glesne, C., & Peshkin, A. (1992). *Becoming qualitative researchers: An introduction*. White Plains, NY: Longman.

This volume provides a very readable mix of the personal experience of the authors and the philosophy and techniques of qualitative research. There is very practical advice about observation, interviewing, data analysis, and writing. It is available in paperback with 190 pages.

Jaeger, R. (Ed.). (1988). *Complementary methods: For research in education*. Washington, DC: American Education Research Association. (1230 17th Street, NW, Washington, DC 20036)

This edited volume has sections on: historical methods, ethnography, case study, and survey methods, among others. Each section has an explanation of the method, suggestions for further reading, and an example of a study that uses the method. Each section can be used independently of the other sections. It is a 475-page paperback.

Merriam, S. (1988). *Case study research in education: A qualitative approach*. San Francisco: Jossey-Bass.

This 226-page paperback is a very readable guide to doing case studies in education that use a qualitative approach. It is a somewhat more "user friendly" approach than the other book on case studies by Yin, and does an excellent job dealing with issues of validity and reliability of case study research.

Rudestam, K., & Newton, R. (1992). *Surviving your dissertation: A comprehensive guide to content and process*. Newbury Park, CA: Sage.

If you feel at all stressed by the prospect of writing a dissertation, get this book. It has all the information that your adviser may not have the time to share with you and even some advice on how to work with your committee. There is very practical advice on how to present empirical results, reviewing the literature, and writing. It also reviews

the various quantitative and qualitative methods of research. It is available in paperback and has 120 pages.

Yin, R. (1993). *Applications of case study research*. Newbury Park, CA: Sage.

This 130-page paperback will be very useful for students who wish to use quantitative methods or who are interested in using case studies to test a single theory or rival theories. There are good examples of case studies that have been done in the education field and a separate chapter on using case studies as an evaluation tool. There are also good examples of how to use visual models in the analysis and presentation of case study data.

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LEGAL RESEARCH: THE "TRADITIONAL" METHOD

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I. INTRODUCTION

King George III of England is reputed to have said that a lawyer is not someone who knows the law, but is one who knows where to find the law.¹ By analogy, this approach applies to anyone interested in the law, regardless of an individual's specialty. More specifically, as educators, students, and attorneys recognize the complex nature of the problems in which we share a common interest, the need to combine research methods and strategies should become increasingly apparent.

The use of complementary methods can help bring research questions into clearer focus and can also offer solutions that might not have been considered had a single method been employed. Further, as Gestalt psychology suggests, by applying a variety of complementary techniques, the sum of a researcher's efforts can exceed the whole of its parts. Moreover, each of the different methods of inquiry is particularly well suited to the nature of the questions it seeks to answer.

This chapter turns to the underlying source of our common interest, the law, and presents a brief overview of what might be described as traditional legal research. As noted in the other chapters, there are two topics running throughout this monograph. The first issue concerns search and seizure and the question asked by legal research is when school officials may conduct searches of students consistent with the Fourth Amendment, as enunciated by the Supreme Court in *New Jersey v. T.L.O.*² or, more recently, in *Vernonia School District 47J v. Acton*.³ The second topic concerns religion and education, and the research issue addresses when, if ever, there can be prayers at public school graduation ceremonies in light of rulings such as *Lee v. Weisman*.⁴

Clearly, a knowledge gap exists between those who work with the law on a regular basis and those who do not. This difference can be illustrated by a brief encounter that took place after a meeting early during the semester of my graduate Education Law course that is cross-registered

¹ Foreward to the law student [unnumbered page], MILES O. PRICE & HARRY BITNER, *EFFECTIVE LEGAL RESEARCH* (3d ed. 1969).

For explanation of the different formats used in this publication see p. 113.

² 469 U.S. 325 (1985).

³ __U.S.__ 115 S. Ct. 2386 (1995).

⁴ 505 U.S. 577 (1992).

in both the College of Education and the College of Law. During the first unit, in which the legal system is introduced, we spend half of one class on a tour of the law library; in this way education students can begin to familiarize themselves with the resources at their disposal.

While speaking with one of the law students who would serve as a tour guide, we were discussing my expectations of the visit to the library. During this conversation two education students were listening but appeared to be lost at the talk of reporters, digests, and *Shepard's Citations*. Faced with the realization of the massive amounts of material that would soon be at their finger tips, they, not unlike many first-year law students, were unnecessarily apprehensive and overwhelmed. I sought to allay their concerns by pointing out that the legal method and other forms of research serve essentially the same purpose: they are all interested in arriving at a better understanding of the question at hand. The difference, of course, is that in legal research the primary source of information is the law itself, even if the initial research begins with secondary sources such as articles and commentaries on the law.

II. THE NATURE OF LEGAL RESEARCH

Systematic inquiry in the law can be described as a form of historical-legal research that is neither qualitative nor quantitative. In other words, it is a systematic investigation involving the interpretation and explanation of the law. Moreover, a legal dispute can begin with a single issue which has far-reaching implications. Perhaps the best example of how a legal controversy with massive social overtones has affected American life is the Supreme Court's 1954 decision in *Brown v. Board of Education, Topeka*⁵ striking down segregation in American public schools.

Aimed at dismantling de jure segregation⁶ in public education, it can be argued that *Brown* was not resolved on the basis of the law alone, for the Court relied on research data from the social sciences in addressing the plight of the African-American children who had been subject to segregation. Consequently, *Brown* served as the impetus for many systemic social changes in American society in a way that the parties may not have been able to anticipate. Justice Kennedy's discussion of peer pressure as it relates to school prayer in the majority opinion in *Lee*,⁷ provides another example of how the Court has progressed in applying nonlegal analyses in attempting to resolve the difficult issues it confronts

⁵ 347 U.S. 483 (1954).

⁶ As in *Brown*, de jure segregation is caused by a state or federal law or statute while de facto is the product of the circumstances.

⁷ *Supra* note 3.

on a regular basis. While *Brown* and *Lee* represent the exceptional cases in which the Court explicitly relied on the social sciences, these two rulings exemplify how these two distinct disciplines can interact.

As it attempts to make sense of the evolving reality known as the law, legal research employs a time line that looks to the past, present, and future for a variety of purposes. By placing a legal dispute in perspective, researchers in Education Law hope not only to inform policymakers and practitioners about the meaning and status of the law, but also seek to raise questions for future research. Attorneys, on the other hand, typically engage in legal research as a means of arriving at a deeper understanding of the issue(s) confronting them so as to better represent the interests of their clients.

Rooted in the historical nature of the law and its reliance on precedent, legal research requires students to look to the past to locate authority that will govern the disposition of the question under investigation, whether school prayer, search and seizure, or another topic. This is so because the Anglo-American legal system is grounded in the principle of precedent or *stare decisis* (to abide by), the notion that an authoritative ruling of the highest court in a given jurisdiction is binding on lower courts within its purview. Moreover, the law by its very nature tends to be a reactive, rather than proactive force, one which is shaped by past events which can help lead to stability in its application.

In light of the more or less reactive nature of the law, when attorneys challenge adverse rulings or as researchers study emerging questions, they each look to see how past authoritative decisions have dealt with the same issue. If there is a case supportive of their respective points of view, then they can argue that it should be followed. However, if precedent is contrary to their position, then they will seek to distinguish their case by attempting to show that it is sufficiently different and inapplicable to the facts at hand. For example, an attorney arguing in favor of prayer at graduation on behalf of a university might maintain that insofar as an institution of higher education is different from a secondary school, then *Lee* is inapplicable.⁸

III. SOURCES OF THE LAW

In examining a legal issue, three broad categories of information need to be considered: primary sources, secondary sources, and research (or finding) tools. Access to each of these can be obtained either manually, by locating the book which contains the desired information, or through electronic databases, namely Westlaw or LEXIS. In fact, as part of the

⁸ For such a case, see *Tanford v. Brand*, 883 F. Supp. 1231 (S.D. Ind., 1995).

most recent tour of the law library conducted by the law students in my class, I was amazed at how much reliance they placed on electronic searches. Computer databases seem to be replacing the need for untold numbers of volumes of reporters, digests, and the like that are discussed later in this chapter. However, as the availability of electronic access may be limited, this chapter focuses on manual searches and operates on the assumption that once an individual is aware of how to conduct legal research, it matters little whether it is carried out manually or electronically. At the same time, if one has the opportunity to conduct electronic searches, these searches involve learning a number of new skills, especially with regard to framing search terms or questions. Needless to say, all searches, regardless of how they are completed may be limited by resources available in a given library.

The source of law one begins with is, in large part, a matter of preference depending upon how familiar one is with legal sources and research. Put another way, an experienced researcher should be able to go right to a primary source, such as a Supreme Court opinion. On the other hand, a novice who is unacquainted with the intricacies of legal research might be wise to start with a secondary source such as an article in *West's Education Law Reporter*, a law review, or an entry in a legal encyclopedia since these should provide information that can help the researcher to develop a full understanding of the issue(s). Since these articles are likely to be well footnoted to the law and other secondary sources, they can lead to the cross-referencing of additional sources of information, not unlike the triangulation of data in qualitative analyses.

A. Primary Sources

As with inquiry in the social sciences, legal researchers rely heavily on primary sources, whether federal or state law. Included here are constitutions, statutes (and their legislative histories), regulations (along with administrative decisions and rulings which interpret them), and case law.

1. Case Law

Insofar as a major focus of legal research and the Anglo-American legal system is case law, as found in precedent setting judicial opinions, this is a logical starting point in the examination of primary sources. Such an approach does not ignore the place of constitutions, statutes, and regulations. Rather, it is based on the recognition that as important as these other primary sources of law are, their meaning may not be clear until they are interpreted by judges or applied in particular circumstances. Also, to the extent that precedent occupies such a central role in the American legal system, it should be noted that most opinions sought by

legal researchers are from appellate courts because these ordinarily have precedential effect beyond the two litigants. In other words, trial court rulings are limited to determinations based on fact between the two parties such as whether a school official actually searched a student's locker. On the other hand, appellate cases concern the interpretation and application of legal precedents such as whether a particular search was constitutionally permissible under the Fourth Amendment based on precedent set by either *T.L.O.* or perhaps *Acton*.

a. Slip Opinions and Advance Sheets

On the day that a court renders judgment, it issues its ruling in the form of a slip opinion, typically available from the clerk of the court. A slip opinion is a bare bones presentation of a court's decision, not containing a syllabus or any research aids commonly found in the reporter systems. Within a few weeks, the opinion is usually published in the softbound advance sheets of the appropriate federal or state reporter.

The benefit of advance sheets is that they include a variety of research aids and cross-references such as headnotes, which are explained later, to assist researchers. Once the bound volume of opinions appears, usually several months (or even years, as with the *United States Reports*) later, the advance sheets can be discarded since their page numbering is identical to that in the hardbound volume. Further, for purposes of citation, once a case is available in its official source, it is no longer necessary to include references to the other sources.

b. Published Opinions

Federal trial court opinions are found in the *Federal Supplement* (F. Supp.).⁹ Federal Circuit Court rulings are published in the *Federal Reporter*.¹⁰ Most of the opinions of federal courts are published.

Opinions of the United States Supreme Court are found in a variety of sources, both electronic and printed.¹¹ Shortly after being handed down as a slip opinion, rulings of the Supreme Court appear in weekly loose-leaf publications, *United States Law Week* (U.S.L.W.), published by the Bureau of National Affairs, and *Supreme Court Bulletin*, by Publishers

⁹ A related series, *Federal Rules Decisions* includes opinions of federal trial courts involving the interpretations of federal court rules not appearing in the *Federal Supplement*.

¹⁰ The abbreviation for the *Federal Reporter* is F., F.2d, or F.3d; 2d and 3d indicate the second and third series of the *Reporter*, respectively.

¹¹ The Supreme Court's ruling in *Missouri v. Jenkins*, involving the desegregation of the Kansas City, Missouri, schools, for example, would be cited to Westlaw as 1995 WL 347368 (U.S. June 12, 1995) and to the *Supreme Court Reporter* as 115 S. Ct. 2038 (1995).

Clearing House. A few weeks later the opinions can be found in *West's Supreme Court Reporter* (S. Ct.), and the *Lawyer's Edition* (L. Ed.), produced by Lawyers Cooperative Publishing Company. At a later date the text of these opinions can be located in their official source, the *United States Reports* (U.S.).¹²

The published opinions of state courts can also be found in several places, starting as slip opinions. Unlike their federal counterparts, most state trial court opinions are not published. Perhaps the most readily available location of state appellate court rulings is in West's National Reporter System. The National Reporter System divides the United States into seven somewhat arbitrarily defined regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, Southern, and South Western. Moreover, in light of the volume of litigation they generate, West publishes separate reporters for over thirty states besides California and New York. Although West is the official source of many state court opinions, a number of jurisdictions such as New Jersey and New York publish their own rulings. The distinct advantage to West's National Reporter System, along with all of its other publications, is that it provides a researcher with ready access into its key numbering system and its headnotes described below.

West also prepares topical reporters, such as the *Education Law Reporter*, which cull federal and state opinions on a specific subject, thereby making the lives of researchers a bit easier by placing most cases on a topic in one location. Along with the opinions of published cases, the *Education Law Reporter* includes peer-reviewed articles and book reviews on a variety of topics in School Law.

Typically, a judicial opinion published in a reporter begins with a syllabus, which includes a brief summary of the facts of the case, a statement of the issue(s), and an outline of the court's rationale including references to precedent upon which the court relied in reaching its decision. The opinion of the court follows and, since appellate court rulings are not always unanimous, any concurring and dissenting opinions are also included.

c. Citations

Faced with a legal citation such as *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971), an important ruling on the

¹² Once a case appears in the *United States Reports*, a parallel citation such as S. Ct. should not be used.

Establishment Clause, the first task of a novice legal researcher is to make sense of this cryptic collection of numbers and abbreviations. Fortunately, there is a method to the madness of legal research.

The first set of numbers in a citation, those preceding the abbreviations, 403, 91, or 29, refers to the volume number in a series of reporters. The abbreviations, U.S., S. Ct., and L. Ed. 2d, identify the *United States Reports*, *Supreme Court Reporter*, and *Lawyer's Edition*, second series.¹³ The second set of numbers indicates the page on which the opinion begins. (See illustration 1.) The date, set off in parentheses, also typically includes the name of the federal or state court which handed down the ruling.

Illustration 1

<i>Lemon v. Kurtzman</i>	404 U.S. 602	91 S. Ct. 2105	29 L. Ed. 2d 745
Case Name	vol rprr pg	vol rprr pg	vol rprr pg

Once the official version of an opinion is available, such as the *United States Reports*, other citations to, for example, the *Supreme Court Reporter* or *Lawyer's Edition* are unnecessary.¹⁴

2. Constitutions

Constitutions, the most basic form of law, create the necessary governmental framework in a jurisdiction; they outline the rights and obligations of both the government and its citizens. Federal and state constitutions are published both separately and in a jurisdiction's statutory compilations.

3. Statutes

Just as judicial opinions can be found in a variety of sources, so also can statutes. Similar to the process involving cases, a new or revised statute first appears as an individual copy shortly after it is signed into law. A statute next appears as a session law, a chronological ordering of laws enacted by a given session of the legislature. A well-known illustration of this is the Individuals with Disabilities Education Act (IDEA), formerly the Education for All Handicapped Children's Act, which is still often referred to as Public Law 94-142. This shorthand indicates that

¹³ The full name for this series is *United States Supreme Court Reports, Lawyer's Edition*; it is published by Lawyers Cooperative Publishing Company. It contains headnotes similar to West along with legal analyses and annotations.

¹⁴ For the complete rules of citing legal materials, see *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (15th ed. 1991).

it was the 142nd piece of legislation enacted by the 94th Congress in 1975. Finally, a statute is published in the official version of a jurisdiction's code.

The official version of federal statutes is found in the *United States Code* (U.S.C.). However, *West's United States Code Annotated* (U.S.C.A.), which includes brief summaries, or annotations, of cases that have applied or construed a statute, is more useful to researchers and practicing attorneys who are attempting to construe the meaning of a statute. State statutes appear under a variety of titles which typically include the name of the state in the title such as *McKinney's Consolidated [Education] Laws of New York Annotated*. The statutes are updated annually by means of a pocket part, a pamphlet which is placed in the rear of the main volume. The frequency with which a new hardbound main volume is issued depends on how many changes occur in a jurisdiction.

Along with seeking an understanding of a statute based on its judicial construction, an important tool is a legislative history. A history traces the development of a statute through legislative hearings and can be useful to clarify its meaning because in reviewing what a bill's author or others may have had to say about it can provide guidance as a court interprets a statute. Moreover, as with the IDEA,¹⁵ it is not uncommon for the author(s) of a bill to include detailed findings and statements of purpose as a kind of preface that can further help to clarify the meaning of a statute.

Federal legislative histories are ordinarily found in the *Congressional Record*, which provides a nearly verbatim report of daily legislative and other proceedings in Congress. However, the *Congressional Record* does not include hearings and rarely contains committee reports unless they are read into the record. Another useful source is the *United States Code Congressional and Administrative News*, which publishes selected committee reports. In addition, copies of various hearings and reports can be obtained directly from the committee or subcommittee that conducted the proceeding or from libraries that serve as depositories of federal documents. State legislative histories vary from one location to another; for assistance in obtaining access to these records, it is best to seek the assistance of a librarian.

4. Regulations

Regulations, which flesh out the meaning of statutes, are developed by state and federal agencies having responsibility for enforcing the law.

¹⁵ See 20 U.S.C. § 1400(b)(c) for the findings and purpose of the IDEA, respectively.

Consequently, in order to fully understand a statute such as the IDEA,¹⁶ it is important to consult the IDEA Part B Regulations¹⁷ since they provide additional detail concerning the implementation of the law. The *Federal Register* is a daily publication which publishes these regulations and also contains presidential proclamations, executive orders, and other documents by government agencies.¹⁸ The *Code of Federal Regulations* is a permanent compilation of regulations, but depending upon when a revision was made may not be as up-to-date as the *Federal Register*. As with state statutes, locating state regulatory material is probably most accessible with the aid of a librarian.

B. Secondary Sources

Secondary sources are writings about the law rather than the law itself. These writings can be broken into two large categories. On the one hand, there are materials that summarize the law on a subject such as Rotunda and Nowak's four-volume *Treatise on Constitutional Law* that provides a summary of the law and its development. On the other hand, scholarly articles in law reviews often offer critiques of the law and advance arguments about what the authors believe that the law should be.

These writings, although of no authoritative value in themselves, are sometimes used by the courts in reaching their decisions. In *Brown*,¹⁹ for example, the Supreme Court relied on psychological data to order an end to de jure segregation in public schools; also, as in *Board of Education of the Westside Community Schools v. Mergens*²⁰ and *Lee*²¹ it is not uncommon for a court to refer to articles in scholarly journals. Thus, secondary sources can, and do, provide the impetus for arguments to change the law.

Among the most commonly relied upon secondary sources are articles in periodicals; encyclopedias and dictionaries; "restatements"; and books and treatises. Secondary sources are particularly valuable to individuals who are neither familiar with nor comfortable with a search through the law itself since an informative article can present an overview of a topic and can open the door to the discovery of the appropriate primary sources.

1. Periodicals

Probably the most useful peer-reviewed journal for educators is *West's Education Law Reporter* (ELR). Articles in the *ELR* offer accurate, con-

¹⁶ 20 U.S.C. § 1400 *et seq.*

¹⁷ 34 C.F.R. § 300 *et seq.*

¹⁸ 1 C.F.R. § 1.1.

¹⁹ *Supra* note 4. For a full discussion of how the Court used data from the social sciences, see RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1976).

²⁰ 496 U.S. 226, 242 (1990) (discussing an article by the legal scholar Douglas Laycock).

²¹ *Supra* note 3, at 2659 (citing "research in psychology" on the influence of peer pressure).

cise, and up-to-date analyses of current and emerging legal topics for academicians and practitioners. The *ELR* also occasionally includes book reviews. Articles in the *ELR*, although ordinarily not as voluminously footnoted as law reviews, are more user friendly and appeal to a wider audience than many other scholarly legal publications. These articles are also reprinted in their entirety in a separate publication, *West's Education Law Quarterly*. Two additional journals are the *School Law Bulletin*, published by the University of North Carolina at Chapel Hill's Institute of Government, and the *Illinois School Law Quarterly*, put out by Illinois State University. Although these journals usually focus on in-state issues, they frequently include articles with a national perspective.

Law reviews, on the other hand, edited by law students, tend to provide more comprehensive and extensively referenced analyses aimed primarily at academicians.²² However, with the exceptions of the *Journal of Law and Education*,²³ edited at the South Carolina Law Center and the University of Louisville School of Law, which addresses issues in K-12 settings, education-related topics generally are not a primary focus of law review articles. In addition, the *Journal of College and University Law*, published by the National Association of College and University Attorneys, focuses on legal developments in higher education. Thus, even though articles in law reviews tend to focus on specific issues, they can serve as an excellent starting point by providing a researcher with a wealth of sources to assist in a search.

Last, but certainly not least, two NOLPE publications, the *NOLPE Notes* and the *School Law Reporter* can be useful. *NOLPE Notes* often contains short articles dealing with timely legal issues and the *School Law Reporter* includes a lead essay before presenting a comprehensive digest of current legal opinions from around the country.

In addition to these periodicals, newsletter services, such as the *School Law News* provide up-to-date useful information. Finally, professional publications including the *American Bar Association Journal*, and newspapers such as the *New York Law Journal* and *National Law Journal*, although rarely referenced, can help in getting a search started.

2. Encyclopedias and Dictionaries

The two main encyclopedias are *Corpus Juris Secundum*, published by West, and *American Jurisprudence*, by Lawyers Cooperative. As with encyclopedias in other disciplines, these works can provide a quick, gen-

²² For an interesting slant on the value and purpose of law reviews, see Christopher Shea, *Students v. Professors: Law-review Debate Heats Up as Student Editors Clash with Faculty Authors*, THE CHRON. OF HIGHER EDUC., June 2, 1995, at A 33-34.

²³ A new publication, *Brigham Young University Journal of Law and Education*, published by the J. Reuben Clark Law School has a similar focus.

eral overview of a topic. While these encyclopedias do produce annual updates, or pocket parts, that highlight major changes in the law, they may not provide sufficient detail to allow a researcher to fully grasp a specific education-related topic.

3. Restatements of the Law

A useful and important commentary on the law, the American Law Institute's ten *Restatements of the Law*,²⁴ published by West, provide in-depth analysis. Although Education Law is not one of the topics covered, developments in the law of torts or contracts can have a profound impact upon the field and can provide assistance in researching background materials. Each restatement opens with a general comment on the law, is followed by an exhaustive examination of trends and developments in a particular subject area, and contains examples of specific cases and variations on the general rule. In light of the comprehensiveness of their coverage, restatements are perhaps the most persuasive secondary materials relied upon by the courts.

4. Books and Treatises

As in any field, a wide array of books and treatises can provide assistance to researchers. Contemporary²⁵ hornbooks contain such standard titles as Prosser and Keaton on *Torts*, and Calamari and Perillo on *Contracts*. Additionally, West's *Nutshell Series*, which includes a volume on Education Law, and various monographs, can provide a condensed overview of a given topic. Textbooks, designed for both undergraduate and graduate courses in school law²⁶ along with casebooks designed more with the traditional law school approach in mind,²⁷ can also provide assistance. Moreover, given the pace of change, NOLPE's *Yearbook of Education Law* provides a comprehensive review of developments. Finally, practitioner handbooks and commentaries prepared by the American Bar Association, the Practicing Law Institute, and their state affiliates, along with procedural manuals can help to research a topic.

²⁴ The ten areas covered are agency, conflict of laws, contracts, foreign relations law, judgments, property, restitution, security, torts, and trusts.

²⁵ As with contemporary Restatements, multivolume scholarly legal surveys include such classic historical series as Wigmore on Evidence, a work not unlike a Restatement, and commentaries exemplified by Blackstone's Commentaries on the Laws of England.

²⁶ See, e.g., KERN ALEXANDER & M. DAVID ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* (3d ed. 1992); MARTHA M. MCCARTHY & NELDA H. CAMBRON-MCCABE, *PUBLIC SCHOOL LAW* (1992); LOUIS FISCHER, DAVID SCHIMMEL, & CYNTHIA KELLY, *TEACHERS AND THE LAW* (4th ed. 1995).

²⁷ See, e.g., E. EDMUND REUTTER, JR., *THE LAW OF PUBLIC EDUCATION* (4th ed. 1994).

C. Finding Tools

As the legal database of some 3,000,000 cases adds at least 50,000 new decisions each year,²⁸ a premium is placed on how to obtain the most up-to-date information. To this end, a variety of finding tools have been developed to allow ready access to the different sources of law. How or where a researcher begins investigating a topic is undoubtedly related to that person's familiarity with the law and legal research. In other words, an experienced researcher who is acquainted with either the topic at hand or how to conduct a search might start with a case and work through the headnotes, discussed below, at the start of the opinion or might rely on cases and secondary materials referred to by the court. On the other hand, a researcher who is less familiar with the law might start with a secondary source such as an article or an encyclopedia. In this way the researcher can get an analysis of the topic along with a collection of cases and secondary materials to assist in further investigation of the subject matter.

²⁸ MORRIS L. COHEN, *LEGAL RESEARCH IN A NUTSHELL* 58 (4th ed. 1985).

LEE v. WEISMAN

2649

Cite as 112 S.Ct. 2649 (1992)

Justice Blackmun concurred and filed opinion with which Justice Stevens and Justice O'Connor joined.

Justice Souter concurred and filed opinion, with which Justice Stevens and Justice O'Connor joined.

Justice Scalia dissented and filed opinion with which Chief Justice Rehnquist, Justice White, and Justice Thomas joined.

Robert E. LEE, Individually and as
Principal of Nathan Bishop Middle
School, et al., Petitioners

v.

Daniel WEISMAN etc.

No. 90-1014.

Argued Nov. 6, 1991.

Decided June 24, 1992.

Public school student and her father brought suit seeking permanent injunction to prevent inclusion of invocations and benedictions in form of prayer in graduation ceremonies of city public schools. The United States District Court for the District of Rhode Island, Francis J. Boyle, Chief Judge, 728 F.Supp. 68, granted relief. Appeal was taken. The Court of Appeals for the First Circuit, 908 F.2d 1090, affirmed. Petition for certiorari was granted. The Supreme Court, Justice Kennedy, held that school could not provide for "non-sectarian" prayer to be given by clergyman selected by school.

Affirmed.

1. Constitutional Law ¶84.5(3)

Reassessment of decision in *Lemon v. Kurtzman*, which set forth standards for evaluation of establishment clause cases, was not required in order to determine whether "nonsectarian" prayer could be offered at school graduation; "pervasive" degree of government involvement with religious activity in present case, to point of creating state-sponsored and state-directed religious exercise in public school, was sufficient to determine constitutionality without reference to *Lemon* test. U.S.C.A. Const.Amends. 1, 14.

2. Constitutional Law ¶84(1)

Principle that government may accommodate free exercise of religion does not supercede fundamental limitations imposed by establishment clause. U.S.C.A. Const. Amends. 1, 14.

3. Constitutional Law ¶84(1)

It is beyond dispute that, at minimum, Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in way which establishes state religion or religious faith or tends to do so. U.S.C.A. Const.Amends. 1, 14.

4. Constitutional Law ¶84.5(3)

Schools ¶165, 178

Public school's activities in connection with the offering of prayer at graduation ceremony constituted government involvement prohibited by establishment clause; school officials decided that there would be prayer at ceremony, selected clergyman to give prayer, and dictated content of prayer

[43]

Because access to electronic databases such as Westlaw or LEXIS may be limited, this discussion focuses on manual searches. Since cases, statutes, constitutions, and regulations may be uncovered by means of such secondary sources as articles, encyclopedias, and treatises, these methods are not discussed individually.

The most common means of accessing judicial opinions are by using case digests, annotated reports, and descriptive word searches. Cases may also be uncovered by combing through citators such as *Shepard's* which allow a researcher to verify the status of a ruling (or statute) as well as to find other opinions which have cited the main case.

1. Digests

A digest is a comprehensive compilation, or index, to the law around major points in a judicial opinion, briefly summarized as paragraph length headnotes or "squibs," thereby granting a researcher relatively easy access to a particular question. By far the most comprehensive digest system is the key number digest developed by the West Publishing Company. Under this system, West has developed seven major headings²⁹ which digest the law into more than 400 numbered and keyed topics, including such education-related topics as schools, colleges and universities, civil rights, and labor relations, each of which is further organized and subdivided into manageable units. For example, if one wanted to find cases on search and seizure in schools, one would look under the major topic of schools, then to the major subheading of students, before turning to key 169.5 "Searches and Seizures." Moreover, to the extent that West has a uniform key system for all of its federal³⁰ and state³¹ reporters, when searching through a digest, one can begin with a table (or alphabetical list) of cases which can be found as a separate volume at the end of a digest. One also can find cases using a descriptive-word index. A descriptive-word index, discussed below, provides examples of key concepts that can assist an individual in thoroughly researching a topic.

²⁹ The seven major headings are Persons, Property, Contracts, Torts, Crimes, Remedies, and Government. Schools, for example, are listed as a subdivision of Government, under the subheading Legislative and executive powers and functions. WEST'S LAW FINDER: A LEGAL RESEARCH MANUAL 16-17 (1989).

³⁰ The federal digests include the *U.S. Supreme Court Reporter*, *Federal Digest*, West's *Federal Practice*-3d, and *U.S. Court of Claims Digest*. *Id.* at 12.

³¹ Digests exist for all states except Delaware, Nevada, and Utah; note also that North and South Dakota joined as are Virginia and West Virginia. In addition, although West is now the official publisher of all of these digests, in a few instances, such as New York, it has retained the name of the former publisher, *Abbott's New York Digest*. *Id.* at 12.

The headnote, or keynote system, consists of a series of short, succinct summaries of the specific points of law in an opinion. (See the sample headnote on p. 45.) These headnotes are numbered sequentially in bold-faced print at the start of an opinion so that by turning to the appropriately identified key, in the ruling, a researcher can find the court's detailed discussion of that given point of law.

Turning, for example, to the question of prayer at public school graduations, a researcher could begin an inquiry by turning immediately to *Lee v. Weisman*.³² The headnotes in the *Supreme Court Reporter* are Constitutional Law, key 84(1), concerning religious liberty, in general, and 84.5(3), concerning religious liberty in the public schools. Key number 84.4(3) is also cross-referenced to schools key 165, "Religious instruction and reading of scriptures" and key 178, "Graduation and diploma or certificate." The genius of this system is that insofar as all of the opinions reported in West use key numbering or headnotes, by looking in an appropriate case, one can find key points of law in all cases on a particular topic from a variety of jurisdictions within the period of time covered by a given digest.

2. Descriptive Word Searches

Words and Phrases, also known as descriptive word searches, is an encyclopedia set of forty-six volumes published by West containing alphabetical lists of words and phrases accompanied by summaries of opinions that have interpreted, defined, or construed them. The use of this system should be especially helpful to those new to legal research as the editors of these volumes cull key words describing pertinent facts about a case in order to assist in its being located.

³² *Supra* note 3.

POWERS

References are to Digest Topics and Key Numbers

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GENERAL rules of construction. Powers 16-22
IMPROVEMENT, extent of power granted. Powers 22
IN gross. Powers 23
INHERITANCE and transfer tax, see this index *Inheritance and Transfer Taxes*
INSTRUMENTS creating powers. Powers 8
INTENT to execute. Powers 33
 Testamentary execution. Wills 589(3)
INTEREST, see this index *Adverse or Pecuniary Interest*
INTERNAL Revenue—
 Inheritance and transfer taxes, see this index *Inheritance and Transfer Taxes*
LAW governing will creating powers. Wills 436(8)
LEASE, extent of power created. Powers 21
LIMITATION over or other disposition of property on failure of execution of power. Wills 694
MAINTENANCE of donee or beneficiary, testamentary power of disposition. Wills 692(2)
MANAGEMENT, extent of power granted. Powers 22
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PERSONS who may be granted powers. Powers 7
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RIGHTS and liabilities of appointees or beneficiaries. Powers 41
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SUPPORT of donee or beneficiary, testamentary power of disposition. Wills 692(2)
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PRECATORY WORDS

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CREATION of trust—

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INCONSISTENT with absolute bequest. Wills 612(4)

LIMITATIONS inconsistent with fee. Wills 601(8)

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RAILROADS—

Generally, see this index *Railroads*Crossing, see this index *Railroad Crossings***PRECEDENCE**

PANEL decisions—

Of Court of Appeals. Courts 90(2)

PRIORITIES, generally, see this index *Priorities*

3. Topic Method

A topical approach to finding cases can also be of great value to novice legal researchers. Perhaps the most useful tool here is the *Index to Legal Periodicals*, the *Current Law Index*, listings similar to the *Education Index* or the *Guide to Periodical Literature*. The *Index to Legal Periodicals* lists articles from law reviews by topic and author, so that an individual may search from a variety of perspectives. Thus, for example, an educational researcher interested in prayer at public school graduations would look for entries under "Education," "Religion," or "Schools and school districts" to name a few.

Reisman, Barbara

Child care under the Family Support Act: guarantee, quasi-entitlement, or paper promise? by A. Collins, B. Reisman. 11 *Yale L. & Pol'y Rev.* 203-31 '93

Reisman, W. Michael (William Michael), 1939-

Autonomy, interdependence, and responsibility. 103 *Yale L.J.* 401-17 N '93

International election observation. 4 *Pace Y.B. Int'l L.* 1-48 '92

Reisman, William Michael See **Reisman, W. Michael (William Michael), 1939-****Reiss, M. Freddie**

Financial reporting by Chapter 11 debtor; by M. F. Reiss, G. W. Newton. 21 *Cal. Bankr. J.* 53-69 '93

Reiss, Ronald B.

California's S.B. 547: local government balancing of public safety and historic preservation. 26 *Urb. Law.* 347-65 Spr '94

Reiter, Barry J.

Fairness issues in employment contracts; by B. A. Leon, B. J. Reiter, C. L. Waldrum. 6 *J. Cont. L.* 189-239 D '93

Reitz, John C.

Public school financing in the United States: more on the dark side of intermediate structures. 1993 *B.Y.U. L. Rev.* 623-43 '93

Reitze, Arnold W., Jr.

Control of air pollution from mobile sources through inspection and maintenance programs; by A. W. Reitze, Jr., B. Needleman. 30 *Harv. J. on Legis.* 409-60 Summ '93

Regulating municipal solid waste incinerators under the Clean Air Act: history, technology and risks; by A. W. Reitze, Jr., A. N. Davis. 21 *B.C. Envtl. Aff. L. Rev.* 1-88 Fall '93

Reitzes, James D.

Product differentiation and the ability to collude: where being different can be an advantage; by D. T. Levy, J. D. Reitzes. 38 *Antitrust Bull.* 349-68 Summ '93

Release

Bankruptcy court jurisdiction to release insiders from creditor claims in corporate reorganizations. J. R. Starr. 9 *Bankr. Dev. J.* 485-501 '93

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Moreover, in addition to these more standard sources, a researcher might wish to search the database assembled and indexed by the Educational Resources Information Center (ERIC) since it often cross-references with many legal and educational publications.

To summarize, if one has a relevant case in the West system, one can begin with headnotes and the keynotes system to find other similar cases in a digest. If, on the other hand, one does not have a case, then the appropriate place to begin would be a journal or encyclopedia article for an overview of the topic.

CONCLUSION

This brief presentation, offering an overview of legal research, is not intended to be exhaustive. Rather, it is illustrative of how the "traditional" method is but one tool in the hands of educational researchers who seek a greater understanding of how the law relates to other disciplines, but most notably to education.

The traditional method, of course, seeks to predict how a court will rule based on precedent. What it does not, and cannot do, is go beyond the law to consider the attitudes, values, and beliefs of those affected by legal decisions. In light of the inherent limitation presented by the traditional legal perspective, researchers may wish to look to the other modes of inquiry to complement their findings. By using more than one approach, individuals who conduct systematic inquiry in the law can deepen their insights into their unique subject of study and can help others in their understanding of the relationship between law and education.

Then, as researchers who share a common interest in the law begin to appreciate how the various methods of systematic inquiry can be combined, perhaps the whole of our labors will be greater than the sum of our parts.

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QUANTITATIVE RESEARCH STRATEGIES

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Introduction

Many people view quantitative research methodology as complex calculations, statistics, X's and O's, formulae about numerical data, and details unrelated to meaningful social issues confronting the public schools and society (Cizek, 1995). In contrast, this chapter shows how quantitative methods can study these issues, add to the findings, and build upon and share in the work of other research methodologies. The intent of this chapter is to provide individuals, particularly graduate students, with some ideas on how to use quantitative research methodology in the study of school law issues.

Quantitative research methodology addresses the questions of who, what, where, how many, how much; and examines associations, relationships, and cause-effect between variables. Quantitative methodology allows for a review of actions taken by previous generations, for an examination of the current status of a condition or topic, and for the exploration of associations between issues. It also explores the potential causal-comparative relationships, and is useful in determining cause-effect relationships between the issues related to school law.

Quantitative research methodology seeks to confirm/deny hypotheses concerning specific relationships that arise in various educational topics. Quantitative methodology does connect to other research methodologies. For instance, data from a quantitative study may well provide information useful for triangulation as reviewed in Adler's chapter in this volume. Such support increases the power of the findings and substantiates the work of qualitative researchers. Yet, what is the connection between quantitative research methodology and school law? Where do the concepts, issues, questions, values and concerns of school law "fit in" with the research methodology of education?

School law is about the relationships of people concerned with issues dealing with children in the public enterprise we call education. Because it is a public enterprise, everyone who has been through education knows about it and has an opinion. Parents, taxpayers, teachers, administrators, siblings, the business community, and the students themselves are directly affected by decisions of policymaking bodies (the school boards) and the implementation of these policies (by administrators and teachers). Hot topic issues of outcome-based education, school

prayer, latchkey programs, inclusions of handicapped and gifted individuals in all classrooms, violence in the schools, are all grist for the research mill as the various parties try to provide the best education possible for the students, the school districts, and the nation. For instance, why, and how, did a group of individuals from the community gain control over a district school board so that no grant for any additional funds to aid and improve education of the children would be permitted to be filed until it had the approval of that special interest group? More importantly, what does such an action say about the democratic process and the fiduciary and legally mandated responsibilities of the school board when it allows its authority to be abrogated?

It is in these contexts that school decisions end up as court cases when the various players believe they are harmed or deprived. As a result, these individuals and groups challenge the system and seek to have their voices heard. Thus, conflicts arise between these affected individuals and the elected officials (school board members) and the school professionals who are charged with operating the system for the benefit of all students. These challenges, to the implementation of programs that would benefit the majority of students or that are in compliance with state and federal mandates, can diminish the effectiveness of education. The challenges also set new precedents for the operation and organization of schools.

There are two investigative strands that will be used in this chapter. The initial strand is the issue of First Amendment rights governing church/state relations, including the effects of *Lee v. Weisman* (1993), the graduation prayer case. This issue will be used in the first five research strategies. For the last two methods, decision trees and cost-benefit analysis, the issues surrounding search and seizure decisions will be the focal point. In both strands, there will be illustrative examples of how quantitative research methodology might be conceived and implemented.

Research into the issues, the ideas, and the various aspects of school law (including the people and groups that make up education) is important for those who lead the educational enterprises. Quantitative research methods can provide a solid database upon which effective and rational decisions can be made and questions answered. Beyond this, quantitative methodology provides a framework that allows greater understanding of the parts and the whole of the system.

Key Elements

As in any research methodology, there are certain key elements that must be considered when conducting a study to assure that the results are not contaminated with bias and other confounding elements, i.e., when

the researcher's own beliefs prejudice the findings. These key elements should guide the planning of research studies: (a) the conceptualization of the problem, (b) the research design, (c) the issues of internal and external validity, (d) the appropriateness of the statistical test used, and (e) the level of significance and corresponding errors that must be avoided.

Conceptualization of the problem. The conceptualization of the problem, including the statement of the problem and the hypothesis, is critical for the researcher. The opening thrust of the study must clearly demonstrate that the researcher has a firm grasp of the issues involved, the variables that are under investigation, and the associations and relationships that can logically proceed from the general questions being asked by the study. The problem statement must clearly delineate these issues. For example, a problem is more than the annoyance caused by some students who want a space to read the Bible and pray before school. The problem is how do we protect the rights of the students who want that activity *and* protect the rights of students who do not want to participate nor want to feel that they are different or who might be coerced into such activity.

Hypotheses. A hypothesis is "a tentative, reasonable, testable explanation for the occurrence of certain behaviors, phenomenon, or events" (Gay, 1987, p. 545). There are two types of hypotheses—research and statistical. The difference is the degree of precision expected in the results to confirm or reject the hypothesis. The *research hypothesis* states the expected relationship between two or more variables. For example, "there is a relationship between the use of school prayer and the level of swearing by students in school." In the research hypothesis, any difference no matter how small would lead to accepting the statement. The *statistical* or *null hypotheses* call for the elimination of chance relationships in determining the relationship between the variables. For example, "there is no significant difference in the level of swearing in school between students who pray before school and those who do not pray before school." In order to reject the statistical hypothesis, the researcher must demonstrate that the differences are not due to chance and that a true relationship exists.

Research design. The research design is the way in which the study is conceived and conducted (Gay, 1987, pp. 81-88). For example, if the question under investigation involved the perceptions of the impact of school prayer decisions on school operations, then the researcher would have to decide which case decisions to use in the study and which individuals in the schools would be affected. The researcher might provide subjects a brief synopsis of each landmark school prayer decision and determine if there were any differences in perceptions of the impact of these decisions among school board members, school administrators, class

advisers, teachers, or other school individuals likely to be directly affected by the decisions. A description of the research design lets the reader know how the researcher made the comparisons, examined the relationships, and assured that the data collected were accurate and unbiased.

As the researcher considers the various research strategies, what is suggested is the use of (a) *randomization of groups* (i.e., by picking the individuals from a hat or using a table of random numbers) and (b) random assignment of individuals to groups (i.e., picking the individuals from a hat and then randomly placing them in alternative piles until the groups are formed). Further, the use of *control groups* (testing people who are similar to those in the study, but who have not been affected by the study) to check against the possibility of contamination of the data is recommended.

Internal and external validity. Among the major concerns for quantitative researchers are the elements of internal and external validity. *Internal validity* addresses the questions that arise concerning the conduct of the study itself and the extent to which the study is reproducible (can be duplicated) with similar results being expected. This element deals with the extent to which the independent, dependent, and extraneous variables are "controlled by the researcher so that the observed changes in the dependent variable are due to the treatment and not an extraneous variable" (Borg & Gall, 1983, p. 634). The researcher must demonstrate control over the variables that may interfere with the interaction of the independent and dependent variables.

The *independent* variable is the one that "affects" (or is assumed to affect) the dependent variable under study and is included in the research design so that its affect can be determined" (Wiersma, 1995, p. 35). Such variables may include location of school districts (urban, suburban, rural), size of school districts (small, medium, large), socioeconomic status of school districts (lower, middle, upper class), roles of individuals (teacher, principal, superintendent, school board member), and the like.

Dependent variables are defined as "the variable being affected or assumed to be affected by the independent variable" (Wiersma, 1995, p. 465). Examples of dependent variables might include attitudes, perceptions, actions, or policy changes of school districts as a result of court decisions.

Extraneous variables are those things, other than independent and dependent variables, that might affect the outcome of the study due to lack of control. Extraneous variables might include decision-making processes in school districts, the climate of the district, the status of the budget and tax rates as these might influence the attitudes, perceptions and beliefs of individuals responding to some question of change in district policy.

External validity. External validity addresses the questions of the value of the findings to the larger or different groups. The researcher should confirm that the findings are applicable to specific and larger groups other than those used in the study. Here, such things as population and ecological validity are key elements. (The reader is encouraged to see the Bracht and Glass, 1968, article listed in the bibliography.) This includes issues of whether the respondents accurately represent the larger population on such items as age, sex, race, etc., complete description of all procedures used, accounting for the Hawthorne Effect (i.e., just being in the study may increase the individual's sense of importance and thus change the study's results) to name just a few. (For a more detailed explanation of internal and external validity, the reader might consider the works of Borg and Gall, 1989, Bracht and Glass, 1968, and Campbell and Stanley, 1968, found in the bibliography.)

Statistical analysis. The issues involved in the statistical analysis call for the researcher to assure that the most appropriate analytic techniques are used and that the appropriate level of significance was established when designing the study. While specific examples will be provided within each of the research strategies that are reviewed, for detailed examination of these issues, the reader is guided to *Reasoning with Statistics* noted in the bibliography (Williams, 1992).

Access to the data set is one limitation that all quantitative studies in school law must address. As those who are familiar with the workings of the legal system and the courts well know, many cases do not reach the courts but are settled within the administrative structures of the school boards using their quasi-judicial functions. Further, there are many cases that are decided by the courts at various levels that are not recorded. There are many reasons for these actions, but the result is that the researcher (qualitative, quantitative, legal, or policy studies) does not have access to the total data set. This limits the ability to generalize to the entire universe of education and the impact of decisions on education. However, even recognizing these limitations, the researcher does provide a benchmark, a starting point, for further exploration and examination of the issues involved in providing education.

In all the key elements, it is a question of balance. The researcher must address each of the areas and devise the best solution, or at least the solution that maintains the most credibility, before conducting the research.

A Journey Through Research Strategies

What follows are specific examples of the various quantitative strategies. Each strategy follows traditional quantitative methodology procedures. Each begins with an introduction, a statement of a problem, a

brief synopsis of what a review of literature might deal with, the research design and methodology, and the statistical analysis procedures (where appropriate). The strategies presented are not the only ones that could be devised, but rather show the possibilities for those interested in school law research. While the research methods flow from historical to experimental, the researcher may begin the research process with any of these strategies. There is no presumption, or necessity, to move from historical to descriptive to correlation, causal-comparative, and experimental in a linear fashion to plan and conduct research.

All research studies begin with a question about relationships between things. These are the "what if" questions that raise the level of consciousness and pervade the search for knowledge. For example, a question might be "how best to provide for student bible-reading and prayer groups in schools versus the challenges of those opposed to any level of state agency 'sponsoring' of religion in schools?" Questions constitute the key element that dictates the use of sound quantitative research. They lead to the exploration of specific independent variables (things that affect outcomes) that affect the dependent variables (the desired outcome). Flowing from the question listed above, the independent variable might be how the success of those who want to have religion in the schools is changing school policy by the school board. The dependent variable would be the number of policy decisions by school boards that agree or disagree with the demands of those seeking prayer and Bible reading in the schools. These relationships are explored under careful conditions so that the results will yield useful knowledge and provide baseline data on the issues involved.

Research Strategy #1. Studies of the Past.

Where do the research "questions" come from? Researchers might look to the past to see what has occurred. This leads to a *historical* strategy that examines documents, diaries, letters, oral history, and case law to determine what went on in the past. In this methodology is found the grounding for future quantitative studies. This database allows quantitative researchers to make connections between variables (accuracy and age of the documents) without the danger of contaminating the field of study with extraneous and irrelevant variables (what the writer had for lunch or dinner). One example might be a review of case decisions concerning student challenges to the policies and practices of school officials regarding their request for Bible study/prayer groups in schools and the court's reasoning in their decisions on these issues.

Within this strategy of historical research, the simple box scoring of decisions is one means to quantify the numerical data. Below is an example of the "planning" process that might occur for such a study.

Introduction

There is a rise in the concern for the moral fiber of the United States that is sweeping the country today. Expressions of concern by various members of society—clergy, politicians, parents, taxpayers—focus on the rising levels of crime, violence, drugs, teen pregnancy, AIDS, welfare costs, and a host of other social ills viewed as prevalent in society today. Various groups have set themselves up as “moral watchdogs” of these growing trends. Blame has been laid at a variety of doorsteps—government, families, churches, kids in general, and the schools. Time and again there are calls for a return to school prayer and religious/moral teachings in schools so that “our children” will grow up right. The dilemma facing school personnel is the tradition of separation of church and state begun in *Everson v. Board of Education* (1947) and continuing through the *Lee v. Weisman* decision. Just what is the court history concerning this separation of church and state and what might be the guiding principles the school administrator might glean from the Supreme Court’s decisions?

Statement of the Problem

The historical study proposed here examines the history of decisions concerning separation of church and state, particularly as they pertain to the schools, via the resulting court challenges at the Supreme Court level within a set time period. Specifically, by decades of Supreme Court decisions, the study traces the win/loss ratio in separation of church and state cases, and the reasons for the success or failure of the lawsuits. The *hypothesis* for this study might be that there are no significant differences between decades of Supreme Court decisions and the rationale used to decide the cases—e.g., the child benefit versus the parochial school benefit theory.

Review of Related Literature

Here, the researcher would examine the legal history of litigant challenges and defendant appeals, the courts’ varying interpretations of the separation of church and state under the First Amendment, and the precedents that might be useful to support or deny school district approaches to religious activities in the schools. Issues such as Bible reading, religious dress, moments of silence, state established or student initiated prayer, invocations/benedictions, and parochial aid come to mind as a beginning place for a theoretical foundation of the study.

Research Design and Methodology

The research design for this proposed study is that of a simple box score approach to the positions of the courts on the issues of church/state

relations. The population for the historical study is all the major church/state relationship decisions from the first major decision (as determined by the researcher) through 1973 or another significant date. There is no sample employed here, as all case decisions are included within the parameters of the study. The population (case decisions) might be divided into various categories—win/loss, by court reporting area, by types of issues, and by decades, etc. A frequency count is prepared for each of these categories and reported in a lengthy table similar to the one that follows.

Table 1*Tabulation of Court Decision*

	1850-1875		1876-1900		1901-1925		1926-1956		1957-1975	
Court Reporter	Win	Lose	Win	Lose	Win	Lose	Win	Lose	Win	Lose
Atlantic	5	1	2	4	6	5	3	4	3	3
Northeast	4	3	5	1	4	2	2	4	2	5

Statistical Analysis

This tabulation of data can be used in analytic reports. The researcher could provide analysis of decade by decade across circuit courts, decade by decade within each circuit, by issues by decade across and within circuit court areas, and each decade singly across circuit courts. The data could be treated to a chi-square analysis that measures frequency of responses by category (i.e., how many cases fall within each of the win/loss columns for each of the case law reporters) and produce significant/nonsignificant difference across and between the categories. In order to provide accurate data analysis, each of the "groups" would have a minimum of 15 responses. If the researcher found that there were less than 15 responses in each group, then the researcher could collapse the cells into similar categories, or in the example in Table 1 above, group by larger periods of time—e.g., a 50-year period.

The results of such a study would yield a careful delineation of the issues involved in church/state relations and the parameters within which school officials might begin to develop an approach to school religious activities. For example, the results would also point to major areas of concern and conflict within the decisions and the tensions between the culture and courts at various times in history.

Research Strategy #2. Studies of Current Conditions.

Another quantitative research methodology is *descriptive* research. Here, the researcher examines the current status of some condition or phenomenon. For instance, the researcher might be concerned with the attitudes of students concerning the *Lee v. Weisman* decision banning graduation prayer in public schools. These studies are useful as a benchmark, or set of base data, for future reference and provide a platform for other quantitative methodologies. The results of these studies do not predict what the various courts will do next, but provide a backdrop against which local school decisions can be made. Descriptive research illustrates what the current conditions are and opens the inquisitive door to other questions of how and why.

Introduction and Review of Related Literature

In this example, the introduction and review of related literature deals with a historical review of the policy changes, court decisions, and responses to the change in graduation prayer in schools and the background of church/state prayer and Bible reading in the schools. The researcher would have to review the opinions and articles about each of the landmark case decisions dealing with religion in the schools. Then, the researcher ascertains how, and in what direction, attitudes might have changed. This latter part is important as it provides a guide to the development of a questionnaire, or interview protocol, which the researcher might use to determine the current state of attitudes regarding the *Weisman* decision.

Statement of the Problem

The statement of the problem might be expressed as follows: With the 1993 Supreme Court decision concerning the ban on the use of prayer at public school graduations, this study seeks to determine the current attitudes of students concerning the banning of prayer at school graduations. The *hypothesis* for this study would be that there is no difference in the attitudes of various groups of students with respect to the banning of prayer at school graduation exercises.

Research Design and Methodology

The research design and methodology for this study might entail the use of a survey or, if the groups were small enough, a structured interview to gather the data. The researcher would review the points of law and decision points found in *Weisman*, construct a survey instrument that would address these issues, and have the survey checked by an impartial source to assure that the items did address the issues over which individuals would have developed specific positions.

Following the construction of the survey, the researcher would define the various groups in terms of race, gender, religious background, section of the state, or whatever criteria might be useful. For instance, the researcher might use the local high school graduating class in various regions of the state in which the researcher lived. After constructing a list of all the high schools, the researcher would randomly select a sample of the high schools in each of the regions. Then, the researcher might randomly select a smaller sample of the graduating seniors from each of the selected high schools that represented the larger population. The researcher would then "issue" the survey to the students and ask for their responses to the items.

Following the return of the surveys, the researcher would compile the results and analyze them for the attitudes held by the students toward the banning of prayer at graduation. This analysis could aggregate the data by race, gender, religious background, region of the state, or the other variables the researcher found that might lead to differences.

Statistical Analysis

As there were several independent variables (gender, race, religious background and location) involved in the study, the researcher has some decisions to make. Where there are two categories of an independent variable (i.e., gender—male or female), the *t*-test for independent samples might be used. A *t*-test is a comparison of the averages of two groups, i.e., males/females, urban/rural, Protestant/Catholic. Where there are three or more categories of a variable (i.e., race—Caucasian, African-American, Oriental, Native American), an *analysis of variance* which allows for comparison of three or more groups would be used. The results would point to specific attitudes and beliefs that would be important for further study. For example, if the data analysis indicated significant differences in the attitudes over the banning of school prayer at graduation by gender, race, religious background, or section of the state, then the researcher might use that data to build additional research studies that would examine these factors more closely.

Research Strategy #3. Studies of Relationships.

A third quantitative research methodology is that of *correlation* studies that begin to examine the strength of relationships between two or more variables. Variables of interest could be drawn from the historical and descriptive studies and placed in juxtaposition to "test" their association to one another. This could mean an examination of the relationship between a court decision banning prayer in schools and the variables of "religiosity" of various segments of society in upholding the ban on prayer in schools. The segments could also be separated into religious

groups, parts of the country, or some other significant variable found to influence prayer in schools. The relationship uncovered by correlation research may range from negative (inverse) relationship through no relationship to a positive relationship. For example, in demonstrating the difference of these relationships we will assume that the ban on graduation prayer is in effect. Thus, for a negative relationship, we might find that when certain religious groups are present in the community, there is a denial of the court's ban and graduation prayers are used. In a positive relationship, we might find that when specific groups of religions are equally represented, and the community is upper middle class, that the ban on graduation prayer is upheld. Lastly, a finding of no relationship might be that given any of the conditions listed above, religions, religious balance, and socioeconomic class has no effect on the relationship on whether the ban on graduation prayer is upheld or not. The results of the study would state the relationship between the variables and the strength of those associations.

Continuing the example of school graduation prayer, certain religious groups might be thought to have a highly positive relationship between the groups and the propensity to sue school districts that fail to provide such opportunities for children to pray at graduation.

Introduction

The researcher begins by looking for emerging patterns regarding the issues, the plaintiff/defendant groups, and other variables that impact on both lawsuits and decisions. As indicated above, relationships can be a key element in providing guidance to school personnel in school prayer issues. Variables such as location (rural, suburban, urban), intensity of religious activity, political culture as set forth by Elazar (1973), socioeconomic grouping, ethnic and religious makeup of the community, school district policies and past practices, all may have a profound impact on the attitudes and practices of school districts. The extent of the relationships may provide guidance to similar districts and administrative personnel who face school prayer/religious issues, i.e., whether to have graduation prayer, whether to permit student initiated prayer, what to do about the peer relationships that are created by the "exclusivity of prayer groups." Yet, the strength of the relationship between and among these variables is unknown. This is why the researcher seeks to determine the strength and the direction of that relationship.

Statement of the Problem

This study examines the relationship of the variables of location (rural, suburban, urban), intensity of religious activity, political culture, socioeconomic grouping, ethnic and religious makeup of the community, and school district policies on the issue of school prayer.

The *hypotheses* for this study include separate statements of relationships between the variables under consideration and the court decisions. For example, there is no relationship between location of school district (rural, suburban, urban) and the school district policies on the issue of school prayers.

Research Design and Methodology

The research design for this study calls for a careful examination of the potential variables and their relationship to the policies of the local school boards. These variables include the independent variables of location, religious activity, political culture, socioeconomic grouping, ethnic and religious makeup of the community, and the dependent variable of the school district policies regarding prayer at graduations. The researcher then selects the group to be surveyed, constructs the survey, and collects the data much like the procedures used in descriptive research.

Statistical Analysis

The statistical analysis for a correlation study seeks to point out strength and direction of relationships between the independent and dependent variables. As previously mentioned, a variety of statistical tests might be applied ranging from Pearson's *r* (relationship between two variables—location of school districts and school board policies), Spearman rho (a measure of relationship between two variables where one is in rank order—the levels of socioeconomic status of the communities and the school board policies), and multiple regression (where relationships are examined between three or more independent variables—location, religious activity, political culture, socioeconomic grouping, ethnic and religious makeup of the community—and the dependent variable—the school board policies). The key element for the researcher is to determine the viability of each of these statistical tests and select the most appropriate. A good source for that decision is found in *Reasoning with Statistics* (Williams, 1992). From the analysis, the statistical relationship can be established. The researcher hopes that the “numbers” approach the more positive (+1.0) or negative (-1.0) ends of the scale, but a low correlation of +/- .10 or .20 may be statistically significant and warrant accepting the hypothesis.

Yet, merely accepting or rejecting the hypothesis is not enough. The researcher also must address the level of practical significance of the findings. The *coefficient of correlation* (.20 in our example) is a “mathematical way of expressing the degree to which the variables relate to one another and not an indication of the degree to which the variables share some common characteristics” (McMillan & Schumacher, 1984, p. 197). The degree of *shared characteristics* is found by squaring the coeffi-

cient of correlation (in our case, .20 squared equals .04). Here, if the researcher found a statistically significant relationship of .20 between the variable of a specific location (urban, suburban, rural) and school board policies, the researcher could state that 4% of the shared characteristics in the study are explained by this relationship. While the .20 correlation may be statistically significant, in a practical sense the researcher might well look elsewhere to determine the reasons for the school board policies as 96% of the results are explained by other variables. This is the reason why, for practical significance, the minimum cutoff of .7 coefficient of correlation is generally agreed to as it explains just under 50% (.49) of the results of the study and points to a powerful relationship (Gay, 1987, pp. 233-234).

If the researcher finds both statistical and practical significance between the variables, then the researcher could move to a deeper exploration of this specific variable. For instance, knowing the practical significance of the findings of location in the correlational study, the researcher can hone in on this specific variable to determine the extent to which it is linked to school board policies. The researcher knowing a strong relationship between rural locations and school policymaking, would further examine the attitudes of rural populations concerning their beliefs and the affect they have on school policymaking. This is a key element to moving to the following two strategies of traditional educational research.

Research Strategy #4. Studies of What Has Occurred.

Once the researcher has established the relationship between independent variables and dependent variables, the researcher might use this data to fashion a research study using *causal-comparative* methodology. Here, the researcher uses the relationship to compare which specific independent variable had an effect on a predetermined dependent variable. For instance, is the propensity to challenge school policies on school prayer at graduation (the dependent variable) a function of specific religious denominations, the political culture of the school district, the way the school district handled student/parent concerns on this issue, or some other independent variable? At this juncture, the researcher is concerned *not* with determining cause and effect, but merely comparing differences between the variables. For example, in dealing with graduation prayer in the schools, the researcher may want to address the question of the effect of pastoral/ministerial/rabbinical influence on issues of school prayer. Do pastors/ministers/rabbis of specific religious denominations lead the challenges to school prayer; do these individuals follow their parishioners' wishes and create the challenges? Or, is there some other variable at work that interferes with the first two variables, such as the national movement that is challenging outcome-based education that affects the local

policies on school prayer, even if graduation prayer is unrelated to outcome-based education? With an assumption of a significant relationship, the research might shift to a comparison of the impact of court decisions on people in the school district. The introduction to this study changes somewhat to demand the examination of the effect of court decisions on the change in the operation of the schools.

Introduction

Over the past decade, various state and federal courts have rendered decisions concerning various aspects of school policies within the church/state debate. For example, let us assume that location (rural, suburban, urban), political culture (moralistic, traditionalistic, and individualistic), and religious denominations are found to have very strong positive relationships regarding school prayer in the correlation study outlined above. Using a causal-comparative methodology, the researcher might determine which of these three has the strongest causal relationship on school prayer decisions and policy development in school districts.

Statement of the Problem

This study examines the effects of the location, political culture, and religious denominations on the "implementers" of policy as specified by Johnson and Canon (1984). There are several *hypotheses* for this study. First, there is no significant difference between the location of the school district and the school prayer policies of the district. Second, there is no significant difference between the political culture of the school district and the school prayer policies of the district. Third, there is no significant difference between the types of religious denominations in the school district and the school prayer policies of the district. Fourth, there is no significant interaction between the variables of location, political culture, and religious denominations within school districts and school prayer policies of the district.

Review of Related Literature

In this scenario, the researcher would review a body of related literature dealing with the establishment of the school officials as implementers of policy as distinct from the school board members who make the policy. This would follow the basic structure established by Johnson and Canon (1984) in their work, *Judicial Policies: Implementation and Impact*.

The researcher must provide a detailed description of each of the independent variables—location, political culture, and type of religious denominations—as to what they are, why they are the key independent variables, and how they are expected to impact school districts. The specifics of these variables might include location (by regions of the country), po-

litical culture (individualistic, moralistic, traditionalistic) (Elazar, 1973), and type of religious denominations (Lutheran, Baptist, Methodist, etc.).

Research Design and Methodology

This research strategy calls for causal-comparative methodology. We now have established independent variables (location, political culture, and religious denominations) that can operate on a dependent variable (school prayer policies). This study could be conducted at the state or national level which opens up greater options for the researcher. While the methodology at its simplest form includes the development, pilot testing, and validation of a survey for gathering data, we now have a more sophisticated research design, as we are looking for potential causes and comparisons of the independent variables and the dependent variable.

Because of the independent variables, we now have a methodology that lends itself to a three-way examination of causes of policy changes. The researcher begins by constructing and validating a survey that can get at the levels of location, political culture, and religious denominations and the type of school prayer policy within a district. The survey might ask questions dealing with attitudes and strength of perceptions of the various individuals in the various subgroups listed above regarding school prayer at graduation. The survey could then be sent to the sample of school building administrators (implementers) and central office/school board members (policymakers) within rural, suburban, urban school districts as well as pastors/ministers/rabbis of various religious denominations within the school district. This sample could be drawn in a variety of ways—*random* (everyone in the larger pool has the opportunity to be selected), *stratified random* (individuals are selected at random but are equally grouped by specific criteria—age, race, ethnicity, sex), or *proportional random sampling* (individuals are selected at random but are assigned to specific subgroups by specific criteria—age, race, sex—by indirect proportion to the percent of that group in the general population). These procedures move the researcher from a general to a more detailed selection and assignment of the respondent population. The survey could use a 5-part *Likert scale* which provides choices from Strongly Agree (1), Agree (2), Disagree (3), Strongly Disagree (4) and No Opinion (0). The researcher, for example, might ask respondents to what degree they agree or disagree with statements such as: "Prayer should be mandated in the public schools," or "Prayer in school leads to better school discipline." The researcher would then collect, compile, and submit the data for statistical analysis.

Statistical Analysis

For each group an average score could be computed for each item of the survey. With the average score, the researcher could analyze the re-

sults using the three-way analysis of variance with the independent variables being location, political culture and religious denominations. The dependent variable would be the categories of school prayer policies within the sample districts. Should there be any significant differences in the analyses, separate analysis for each specific knowledge or practice could be examined using the three-way analysis of variance followed by a post-hoc test that details the specific groups that create the statistical significance. For instance, was it the political culture, the location of the districts, or the religious denominations that led to the significant differences in the study. As mentioned above with respect to the use of computers for analysis purposes, the researcher must specify which post-hoc test should be used. The results of this study would point to potential causal relationships between the variables that would lend themselves to further examination.

Research Strategy #5. Studies That Disclose Differences.

The fifth research strategy addresses the cause-effect relationships between independent and dependent variables. This endeavor leads to the use of either experimental or quasi-experimental research strategies. The distinction between these two strategies lies in the degree of control of the independent variables. Experimental strategies use random assignment of individuals within the study to either the experimental or control group. Quasi-experimental strategies typically are not able to use random assignment due to the use of intact groups (such as intact classrooms or intact school boards) (Gay, 1989). While quasi-experimental strategies do not allow for the level of control, as found in true experimental strategies, there are specific designs that provide adequate control of potential sources of invalidity that still allow for the examination of questions of cause and effect (Gay, 1987, p. 289). The primary means of controlling this potential invalidity are the use of matching criteria for selection of the individuals or groups, or the use of analysis of covariance as a means to statistically make the two groups equivalent on some initial measure so that the results of the study will be more accurate.

Once the researcher has the sense of what specific independent variables affect the dependent variables (in our case, graduation prayer), a study can be designed that will examine the cause-effect relationship between the independent and dependent variables. For instance, in the example we will use below, there are two general groups in the population—those school districts that had policies preventing the use of graduation prayer before the *Weisman* decision, and those school districts who established policies banning graduation prayer after the *Weisman* decision. The districts to be “tested” might be randomly drawn from each of these groups as they do represent different mindsets regarding graduation prayer. However, as they cannot be randomly assigned, the use of a

quasi-experimental design is appropriate. There are many types of quasi-experimental designs that a researcher might use in this study. The reader is referred to volumes by Campbell and Stanley or Cates for a detailed explanation of the specific research designs and the drawbacks of each design.

In planning the study, the researcher would first isolate the independent variable. Then, the researcher selects the school districts from the different groups (perhaps done randomly) and manipulates some condition to determine its affect on the dependent variable. For instance, if school district location (urban, rural, suburban) was assumed to be the significant variable, then the study would deal in detail with this variable to the exclusion of other possible explanatory variables. If the results of the study show that school district location was a significant cause in the lawsuits regarding graduation prayer, then the researcher might conclude that in similar locations we might expect challenges to school district graduation prayer policies.

In addressing the issues of *Weisman*, the astute school law researcher might have had an inkling of the direction of the Supreme Court as the dynamics of the court had changed and the challenge brought by *Weisman* seemed to be addressing a particular concern of society as shaped by the politics of the nation. Many school law researchers do follow the trends of the court and are aware of potential changes in the court's direction. Thus, for our example, assuming the researcher anticipated a change in school prayer "policy" and assuming a lead time of one year before the implementation of a policy that eliminated school prayer from graduation exercises, what might this cause-effect study look like?

Introduction

School prayer is an issue that pervades school districts at several junctures during the school year, but particularly at graduation. For many years, school districts across the nation have allowed, encouraged, or arranged invocations and benedictions at graduation ceremonies regardless of the religious makeup of the community or the audience. With the *Lee v. Weisman* decision, what effect would such action create on the part of the public and the graduating class? In the year following the *Weisman* decision, there were attempts to circumvent the decision by school district personnel, by parents, and by students. Some of the reactions to the *Weisman* decision are illustrated by reports of behavior on the part of the valedictorian of the graduating class who sneezed at the end of the address, with the resulting action of the entire class standing and in unison saying "God Bless You," to districts allowing student-led prayer after being voted on by the graduating class. In other districts, the decision in *Weisman* had no effect on attitudes as policies prohibiting school prayer had been in effect for some time.

Statement of the Problem

This study examines the attitudes of parents and students where, due to *Weisman*, the use of graduation prayer had been eliminated. The *hypothesis* for this study is that there is no significant difference between the attitudes of parents and students in school districts that permitted and in school districts that did not permit school prayer in 1992, following the 1993 *Weisman* decision eliminating school prayer at graduation ceremonies.

Review of Related Literature

The review of related literature would deal with the background of school prayer issues in education, a review of the case law regarding school prayer, and a review of the policies that districts had in effect. Attitudes toward religious and school prayer issues on the part of various groups—parents, students, staff, administrators, religious leaders—would be reviewed to form a basis on which to derive the expected attitudes toward the elimination of school prayer at graduation.

Research Design and Methodology

In this study, the researcher might use a nonequivalent control group design with random selection of respondents within each of the two categories. The categories are the preexisting condition of policies and practices permitting, or not permitting, school prayer in the school districts. This research design is one of the most frequently used in educational research due to the fact that the researcher has "intact groups that would make it impractical to randomize or where educational officials would be unreceptive to the demands of randomization" (Cates, 1985, p. 78). The design would look like that found in Figure 1 below.

Figure 1 Nonequivalent Control Group Research Design

Random Selection	Pre-Condition	Pre-Test	Intervention (<i>Weisman</i>)	Post-Test
District Permitting Graduation Prayer Prior to <i>Weisman</i>	School Prayer 1992	X	No School Prayer 1993	X
Districts Not Permitting Graduation Prayer Prior to <i>Weisman</i>	No School Prayer 1992	X	No School Prayer 1993	X

For this example, we also assume that the researcher anticipated the potential change in school prayer by the Supreme Court and gathered pretest data from high school juniors and their parents in the year prior to the *Weisman* decision. This is not an unusual occurrence for those interested in school law research who are cognizant of the activities and potential trends of the courts.

The independent variables would be the various groups in the school districts (parents and students) and whether the districts permitted graduation prayer prior to *Weisman*. The dependent variable would be the attitudes espoused and exhibited by the respondents. The researcher would first list those districts, by state or region, that had a policy permitting school prayer at graduation and those that had a policy prohibiting school prayer at graduation prior to 1992. From this list, the researcher would randomly select districts of similar size, location, and other controlling variables, selecting an equal number of districts that were as equivalent as possible from each of the two categories. Once that was completed, the researcher would arrange lists of current students due to graduate the following year. From that list, the researcher would randomly select students (and their parents) for inclusion within the study.

The researcher would devise a survey instrument, pilot test the survey, and assure its validity and reliability. Then, in 1992, the year preceding implementation of *Weisman*, the researcher would visit these school districts immediately following the graduation ceremony, administer the survey, and gather data on attitudes of students and parents in school districts which did and did not have prayer at graduation. This would entail gathering survey information from the individuals within the groups listed above. This would be the *pretest* portion of the study.

The *intervention* of the *Weisman* decision in 1993 would be expected to change the attitudes of these individuals in those districts that are now faced with eliminating prayer at graduation. The researcher would visit the same school districts and individuals in 1993 at the graduation ceremony and gather survey information concerning the attitudes from the *same groups and individuals* (students and parents) regarding the lack of prayer at graduation. This is the *posttest* portion of the research study.

Statistical Analysis

The researcher would compile the data from the surveys, both pre and post. Numerical assignment would be made, averages calculated, and appropriate statistical tests would be applied. In this example, an analysis of covariance would be appropriate to account for initial differences of the nonequivalent groups. To follow the example above, this analysis would consider the attitudes of parents and students toward gradu-

ation prayer before and after the *Weisman* decision the dependent variable. The implementation of the *Weisman* decision would be the independent variable. The findings of the study would reveal differences between the experimental (the district that changed its policy in response to *Weisman*) and control group (the district that prohibited prayer even before *Weisman*). With these results, the researcher could further study the specific differences between individual groups (parents, students, teachers, administrators, religious leaders) and the effects these groups had on attitudes about prayer at succeeding graduation exercises.

Alternative Quantitative Methods

Beyond the standard educational research methodologies, a researcher might consider the development of a research strand using management science techniques. These methodologies allow for the merging of several areas and permit the researcher to produce a useful model or series of suggested guidelines for both school administrators and policymakers to develop both policies and plans of action. The techniques proposed here are decision tree modeling and cost-benefit analysis. Due to the nature of these techniques, the examples used will be issues of search and seizure in the schools.

Research Strategy #6.

Decision Theory and Decision Trees for Practitioners.

The decision tree methodology is explained by Anderson, Sweeny and Williams (1983). Decision trees are a subset of decision theory that allows for the "determination of optimal strategies for use when a decision maker is faced with several decision alternatives and an uncertain or risk-filled pattern of future events" (Anderson, Sweeny, & Williams, 1983, p. 414). What might be more fraught with risk than improper search and seizure procedures and decisions by school officials? Think of the possibilities of risk involving a bomb threat to a school of 2,000 pupils. Do we get the students out of school or not? Do we search all, some, or none of the lockers of the school? How do we account for the variable of time between the call and the alleged detonation time? Who should do the search—school officials, police or fire department personnel—and under what conditions? Having personally been involved in these activities, there are several decision points and alternatives that must be considered.

Introduction to the Problem

Over the past two decades there have been many court decisions regarding search and seizure actions of school officials. These court decisions have yielded specific guidelines for the conduct of searches.

However, while these decisions have given us guiding principles to follow, there are a number of "practical" decision points and alternatives that must be considered by each school administrator when contemplating a school search. These decision points include the legal aspects of searches as well as (for lack of better terms) the ethical, moral, and administrative decision points. Just what alternatives do administrators use, and what alternatives should they consider in contemplating and carrying out a search of lockers, student property, student persons, and the school? This study examines the legal and administrative decision points and builds a set of decision theories useful to school administrators in the conduct of searches within schools.

Review of Related Literature

The review of literature would contain the standard legal guidelines found within the court decisions that allow for, and prohibit, certain actions while conducting a search within a school. In addition, the literature search would review the nature of decision theory, the nature and extent of the use of probability theory where there is uncertainty, and how to best determine the appropriate levels of probability. Further, the review of related literature would deal with the actions reported in the literature (and court decisions) that administrators took under various search conditions.

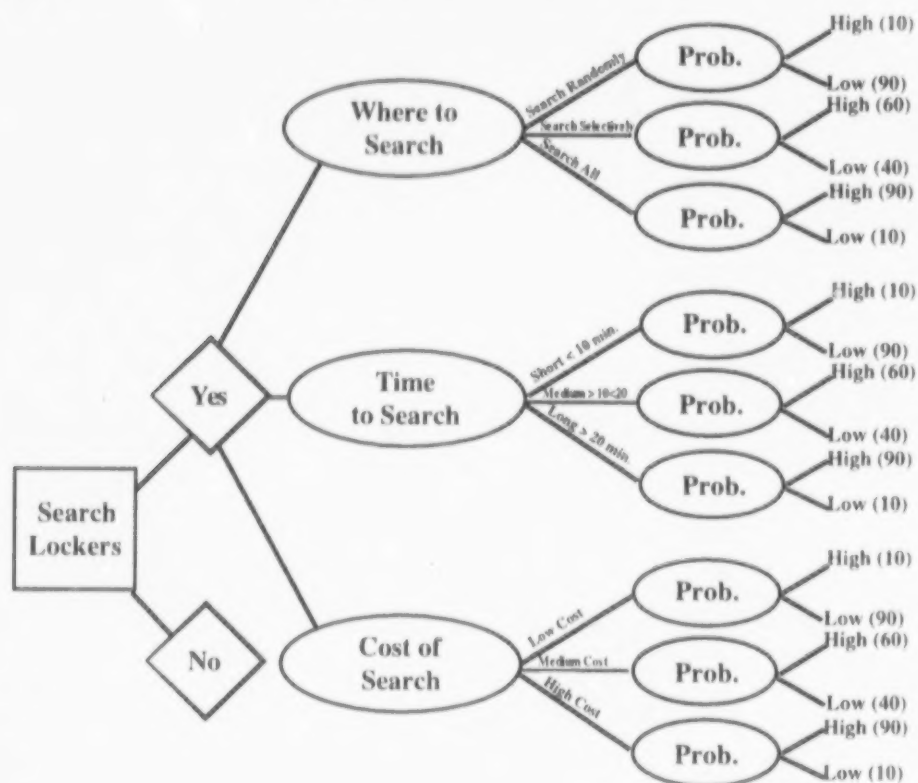
Research Design and Methodology

The research design for this strategy could best be described as a blend of descriptive, correlational, and causal-comparative, using educational research parlance. First, it is suggested that the researcher develop a decision theory scenario that would include the various aspects of the decision confronting the administrators. The researcher would have to describe the conditions of the search, the alternatives that face the school administrator, and the consequences (in probability terms) of each action. Of necessity, this would entail the researcher producing a decision tree, acquainting practitioners with the notion of decision theory, survey administrators for the actions they would take under each scenario, and why they would act as they did. The researcher would glean the decision strategies used by these "experts," redesign the scenario, recalculate the probabilities, and reduce the scenario to the single best based on the results. The researcher then could submit the final decision tree to practitioners in the field and reach consensus on the best set of alternatives for each scenario.

The example in Figure 2 of a decision tree over the issues involved in search and seizure may help clarify the planning that goes into the construction of a decision tree. The decision to be reached is whether or

not to conduct a search and the probability of success if the search is conducted. The square represents the starting point—to conduct the search or not. The diamonds, marked Yes and No, are the initial decision points. If the decision is to conduct the search, then the three aspects (for this example) of where to conduct the search, the time needed or devoted to the search, and the cost (salary, public relations, good will, inconvenience of students) must be considered. The researcher would hypothetically establish the parameters for these aspects and label them. The researcher then needs to consider the probability (marked Prob. in the diagram) for success in finding the contraband (the High or Low).

Figure 2 **Decision Tree for Search and Seizure**



Once the initial decision tree is established, the model is tested with practitioners in the field as indicated above. With the responses from the field answering the questions of where, time, costs, and probability of success, the researcher can reconstruct the decision tree to more closely model reality.

Statistical Analysis

Due to the nature of the decision theory/decision tree development and refinement, there is no statistical analysis in this research strategy that complements the first five research strategies. However, if the researcher was of such a mind, a descriptive survey with attendant statistical analysis of responses from the administrators could be conducted. Such an exercise might not test a theory per se, but it will produce a product that would enable the practitioner to move to preventive law practices.

Research Strategy #7. Cost Benefit/Effectiveness Analysis.

The last research strategy proposed is that of cost benefit/effectiveness (CB/E) of search and seizure efforts of school administrative personnel. Speaking from experience, one of the hallmarks of search and seizure activities of school administrators is the lack of results of such activities given the effort expended. If school administrators are expected to "keep the peace" and "keep a lid on illegal and violent activities in schools," then it might be helpful to examine the procedures used by the school administrators and see if, via quantitative methodology of cost benefit/effectiveness, we can make searches either more productive or less costly.

Introduction

In trying to reduce violence and illegal drugs and alcohol in the schools, school administrative personnel and security forces are spending a great deal of time in the search and seizure process. This not only includes the actual search time, but also the preparation, aftermath, counseling, and legal affairs that must be attended to in either the case of finding what was sought or in "cleaning up the mess" of a fruitless search. In either event, the use of administrative time for such activities is costly and must be reduced, or the benefits of the search must be shown to outweigh the costs.

The proposed study examines the cost benefit/effectiveness relationships found in using school personnel for search and seizure activities. Specifically, the study calculates the costs of such activities by a variety of school personnel and examines the benefits of such activities.

Review of Related Literature

The review of related literature for this research strategy would include several sections. First, there would be a section on the growing

concern for time and effort expended by school administrators with the search and seizure process. This would include literature from school administrators, school board and central office individuals, as well as the general opinion literature. Second, there would need to be a detailed examination of the strengths, weaknesses and methodology involved in cost benefit/effectiveness procedures. This section would draw heavily of the work of Levin (1983) and studies that have used these techniques. Third, there might be a section on the development of a "Cost of Search Index" and the variables that must be considered in determining the cost of administrative time and effort in search and seizure practices. This would include the issues of salaries, time, and stress factors associated with search practices. Fourth, there would be a section on the benefits and effectiveness of a search and the criteria used to determine whether a search had been beneficial and/or effective.

Research Design and Methodology

Here the researcher returns to a design and methodology that more closely approximates "traditional" quantitative educational research. The design is somewhat like a descriptive research design in that the researcher gathers data regarding various searches that were conducted. This would follow a structured interview design, as well as data collection for items such as salary; time involved in the search; effects on administrators, students; and the climate/culture of the organization. The structured interview would deal with a limited population of school administrators, preferably selected for their direct involvement with the search process. Two extremes could be considered in this study—those administrators who infrequently conduct searches and those administrators who frequently conduct searches. In that manner, not only can costs and benefits be described, but also efficiencies associated with repetitive action might be taken into consideration. The benefits of the search must also be considered. This would entail calculation of specific benefits of specific searches.

With this data in hand, the researcher could then construct a cost benefit/effectiveness analysis for specific search strategies for specific searches. This could be for both those frequently involved and those not frequently involved in searches. Comparisons could be made and the appropriate CB/E techniques could be replicated and disseminated throughout districts and states.

Statistical Analysis

Due to the nature of cost benefit/effectiveness research strategies, no standard statistical analysis using educational statistics would be needed.

The numbers and data generated by the CB/E analysis would be sufficient to determine the best set of techniques to use.

Uses of Quantitative Methodology in Educational Law

There are many research questions that can be addressed by quantitative methodology in the area of educational law. These should not be limited to merely counting cases; they also deal with the attitudes, opinions, and effects of specific and multiple court decisions on issues facing school personnel. A sampling of questions might include:

Who are the specific groups that oppose banning prayer in schools, and why do they object?

What effect does inclusion of special education students have on school students, patrons, personnel, and budgets?

What are the perceptions of school administrators toward issues of educational reform and school restructuring?

What is the relationship between state proficiency tests, the rate of graduation/dropout, and the skills needed for work?

What is the difference between gender and age views of title IX and violations concerning sexual harassment?

Any of these questions can be addressed using quantitative research methodology that can provide useful data and knowledge to the profession. It should be emphasized that the results of such efforts will only form the basis for potential action by school personnel. The results of quantitative studies are not stand-alone, fixed answers to the problems faced by educators. Rather, they are additional data points that the educator can draw upon to render a decision. In a sense, the results of the data analysis and the conclusions drawn should be neutral and should allow for interpretation by the individual implementing the decision. The key element is that in quantitative methodology, the user of the information has sound data on which to base a decision because of the use of control and the effort to eliminate bias and confounding variables. All data, whether quantitative, qualitative, or from whatever methodology used, can and should be viewed with a critical eye. All data are just information for the individual decision maker to put into the mix of the decision-making process. Quantitative research methodology tries to assure

that the data are accurate and reproducible, thus allowing for consistency that aids the decision-making process.

In addition, quantitative research methodology can provide a base of both qualitative research methods and policy study methods that examine similar problems from different perspectives as reviewed elsewhere in this volume. Quantitative methods can provide information for qualitative research methods necessary for triangulation of data. Quantitative methods also provide a database that a policy studies researcher can use to render decisions on specific issues. The findings from quantitative research provide another vehicle by which researchers can view the issue, the legal concern, or the knowledge, attitudes, beliefs, and actions taken by school administrators, students, parents, and community members. Knowledge and use of all the complementary research methods can only aid the school administrator and policymaker in rendering decisions appropriate for the schools. No one method alone can provide the information needed for decision making. Several methods combined, however, can produce a stronger decision and course of action.

Conclusion and Summary

This chapter sought to develop five research strategies that might be useful for researchers and graduate students within the arena of school law. The author has suggested that while traditional analysis of school law issues and topics might serve the purpose of continued examination of these issues, there are other strategies that the researcher may consider. These have included not only simple box scoring, but also in-depth analysis of the actors within school law—the implementers and the policy-makers—as they react to the notions of court decisions and changes in philosophy. The author has also suggested that proper grist for the school law research mill may be practitioner/practical research topics that examine how to do a better job in the arena of school policy development and school operation. Better decision making, better policies, and better practices are the aim of all educational research.

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Anderson, D. R., Sweeney, D. J., & Williams, T. A. (1983). *An introduction to management science: Quantitative approaches to decision-making* (3rd ed.). St. Paul, MN: West.

This textbook outlines 18 management science approaches to quantitative decision making, some of which have application to education. Besides the detailed use of decision trees and decision theory, the authors work the reader through issues of inventory models, computer simulations, transportation models, queuing models, and scheduling models. While all the techniques in the volume are aimed at business management, there are applications useful for decision making in education.

Borg, W., & Gall, M. (1989). *Educational research: An introduction* (5th ed.). New York: Longman.

This volume is a solid general research methods book for a beginning researcher in the area of quantitative methodology. The authors explain, with examples, the various parts of a research project, the varieties of procedures that might be used, the construction of instruments to gather data, the research designs available and their relative strengths and weaknesses, and the full range of statistical procedures that the beginning researcher might consider.

Bracht, G. H., & Glass, G. V. (1968). The external validity of experiments. *American Education Research Journal*, 5, 437-474.

The Bracht and Glass article is the standard for the field of educational research as a way to increase the external validity of the individual study. While it only deals with the external validity questions of research methodology and research design, it provides examples and means by which the researcher assures that the results will be valid and applicable to the larger population.

Campbell, W., & Stanley, J. (1968). *Experimental and quasi-experimental designs for research*. Chicago: Rand McNally.

This classic volume on experimental and quasi-experimental design is a must for educational researchers. It is still the singular volume that examines in detail the possible research designs (the X's and O's) with an eye for how and when each might be used. Included in the volume is an extensive discussion of the principles of internal validity. The discussion is detailed and well reasoned, but perhaps should be held in abeyance by the beginning researcher until completion of the second basic research design course.

Cates, W. M. (1986). *A practical guide to education research*. Englewood Cliffs, NJ: Prentice-Hall.

This short, paperback volume is a must for the beginning researcher. Written by a teacher of educational research for master's and doctoral students, the author demystifies the quantitative research process. Of particular note is the short, but easily read chapter on research design and a translation into laymen vocabulary of the Campbell and Stanley work on internal validity. The author also provides examples, with explanatory criticism of actual students' work in the process of development of the various stages of a research proposal.

Cizek, G. J. (1995, March). Crunchy granola and the hegemony of the narrative. *Educational Researcher*, 24(2), 26-28.

The author provides a brief, and somewhat humorous look at the disparities between quantitative and qualitative research methodologies. While representing the quantitative spectrum, the dialogue is opened for continued exploration of these methodologies and how they might complement one another.

Elazar, D. (1973). *American federalism* (3rd ed.). New York: Harper Row.

This short, classic volume in political science is referenced here as a means by which the beginning researcher in school law might consider other factors and variables that affect research studies. The notion of political cultures in each of the 50 states, and the effect that these political cultures have on legal and policy questions is both illuminating and necessary if research results are to be applied to practical situations and social issues and concerns. The notion of political cultures has meaning, not only for quantitative research as indicated in the text, but for qualitative research as a means to understand the social and personal agendas of individuals and groups in society.

Gay, L. R. (1987). *Educational research: Competencies for analysis and application* (3rd ed.). Columbus: Merrill.

This volume is aimed at the novice educational researcher as well as those interested in the interpretation and use of results of published research. The emphasis of the volume is to demystify the research process and to assist the consumer of research to understand just what the researcher found and produced. The author uses copious examples of the various stages of the research process and has maintained a sense of humor found in the earlier volumes. Part seven, for instance, which deals with statistical analysis and methods, begins with a picture of Lon Chaney in the classic film role of "Wolfman" and the

statement "The word is 'statistics' not 'sadistics.'" This, plus the simplified and realistic examples known to school people, aid in the reader's understanding of the research process.

Johnson, C. A., & Canon, B. C. (1984). *Judicial policies: Implementation and impact*. Washington: C.Q. Press.

This volume is an attempt by the authors to look at the various levels of impact of judicial policies. The volume speaks to both the primary audience of judicial policies—judges and lawyers—as well as the secondary level—the implementers—of judicial policies. It is these secondary level individuals who are of most importance in educational research as these are the individuals (the superintendents, principals, and teachers) who are responsible for translating judicial policies into action and who are most affected by judicial rulings and interpretations of their implementation attempts.

Lee v. Weisman, 112 S. Ct. 2649 (1992).

Lemon v. Kurtzman, 403 U.S. 602 (1971).

Levin, H. M. (1983). *Cost-effectiveness: A primer*. Newbury Park, CA: Sage.

The Levin volume is a short description of the detailed workings of cost-effectiveness and cost-benefit analysis as applied to education. Besides talking the reader through a step-by-step approach to these decision-making techniques, the author provides examples for how these approaches might be employed. For those considering these management science techniques in educational areas, the volume is a "must" on the reading list.

McMillan, J. H., & Schumacher, S. (1989). *Research in education: A conceptual approach* (2nd ed.). Glenview, IL: Scott, Foresman.

The McMillan and Schumacher volume is a text that deals with educational research at the conceptual level. This does not mean that it is theoretical, but rather strives to bring the reader to an understanding of the concepts and nature of educational research. It is also one of the very few research textbooks that has a clear chapter on analytic research which encompasses legal research and policy studies. The volume also has specific chapters on ethnographic research and evaluation research that the reader, and those interested in qualitative methodology, will find both interesting and enlightening. The volume does not presume either extensive knowledge of the research process nor

does it aim at making the reader a high level researcher. The aim of the authors remains the illumination of the research process and the uses of the various conceptual frameworks for gathering, analyzing, interpreting, and using research findings.

Wiersma, W. (1995). *Research methods in education: An introduction* (6th ed.). Boston: Allyn & Bacon.

This volume, now in its sixth edition, has proven to be a stable commodity in the field of research methodology. It is aimed at the beginning researcher in education and works the individual through the maze of research terms with specific examples at each stage to provide guidance to the research process. It is a standard research methods textbook with an emphasis on quantitative methodology, statistical analysis methods, and data collection. Besides examples, the author provides graphics and figures that assist in shedding light on the research process.

Williams, F. (1992). *Reasoning with statistics* (4th ed.). Ft. Worth, TX: Harcourt, Brace, Jovanovich.

While not a statistics volume per se, it is this author's contention that it is more important to understand what statistical test to use under specific conditions rather than understand the derivation of various statistical formulae. Therefore, Williams' volume is a key for the beginning and experienced quantitative researcher. Williams clearly, and with examples, shows which statistical test to use under which conditions, what to look for in computer printouts so that interpretations of the findings can be made, and provides the researcher with a solid understanding of the statistical analysis process, without having to figure the formula.

RESEARCHING LEGAL TOPICS FROM A POLICY STUDIES PERSPECTIVE

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Introduction

"In every transitional age one must let go the finishing, and look on beauty bare. The incompleteness, the groping, fits our age" (May, 1985, p. 201).

The essence of policy studies is the provision of timely information for society's decision makers. In order for a policy study to make a difference in society's choices, it is often necessary to "let go the finishing," which may be important in other kinds of research, to cut to the essentials of the questions and "see the beauty bare."

Policies are manifestations of choices society has made about its future. When a state government chooses to decrease funding for K-12 education, the effects will be felt by its citizens far into the future. The passing of law makes state policy. The constitutionality of the law will be challenged in court and those decisions will make more state policy. Obvious, subtle and interrelated effects resulting from this policy will continue for generations. Policy studies are the scholarship about such choices, about the people, groups and governments which make such choices, about the options considered and not considered, about the impact of such choices immediately and long term. Clearly, this is a broad category of research, and it can include, overlap or duplicate other kinds of research. What makes "it" policy studies? The use to which it is put is the factor which makes it policy studies: research "specifically directed at providing policymakers with the options and information they need to solve the problems we face today" (Majchrzak, 1984, p. 11).

A policy studies approach to researching legal topics is the broadest and most loosely defined of the research approaches described in this book. A policy study can be simple or complex, depending upon the questions asked. The purpose of a policy study may be the defining of questions for future research. When doing a policy study the researcher may use any or all of the methods described in previous chapters. In fact, a researcher may do exactly the same things described in any of the other chapters but, as stated above, the use for which the study is intended will define it also as a policy study.

This chapter defines policy, outlines the values, paradigms and disciplines in policy studies, examines the various forms of policy studies

(e.g., policy analysis, policy research, and evaluation research), identifies the major activities in the policy research process, suggests approaches to cooperative policy research, and discusses criteria for determining a good policy study.

Policy Defined

Policy can be simply defined as a vision of where we want to go and guidelines for getting there. But, a policy statement can take many forms ranging from an Act of Congress which sets national direction on an issue to a local school guideline which describes what courses of action the board approves in a given situation. Policy can also emerge from a series of decisions from one or more sets of decision makers, which is often how our national policy on an issue emerges. We can look at decisions made and actions taken and, after the fact, discern the policy or the policy direction.

Policy research can also take many forms and is subject to many descriptions. The following description is from Sandell (1977):

[a] set of procedures for inventing, anticipating, exploring, comparing, and articulating the alternatives available for achieving certain objectives. It is a method of managing...collecting and organizing...information. It is an effort to ease the consternation that stems from seeking better ways to ordain the process of decision making. (p. 48)

Policy research is done to aid policy-level decision making. This view of policy studies encompasses a process view of a policy-related method that leads to sounder decisions.

A "working" definition of *policy* may be helpful at this point. Figure 1 presents the working definition of policy and a policy statement used by the Illinois State Board of Education in its policy development cycle. The crucial points to note are the references to policy as long term, involving leadership, and giving direction to subsequent decisions such as the allocation of resources. Note that in this working definition it is also pointed out that policy statements may require the subsequent development of procedural statements such as guidelines, rules, and regulations. It is the confusion between policy and procedural statements that often creates chaos for both the decision maker and the researcher.

It is important that we understand that policy is wide, rather than narrow, long term rather than short term, and that it involves leadership. The leader is needed to paint the vision that becomes the policy. The policy research is needed to provide comprehensive information to the leader/decision maker.

Figure 1 What Is Policy? A Working Definition:

In general, *policy making* involves decisions intended to have wide rather than narrow influences on people and operations, and which are intended to have more than a short-range impact. In somewhat less general terms, *policy making* has the following three characteristics:

1. Policy making involves the strategic function of leadership and guidance.
2. Policy making shapes and clarifies substantive goals and major objectives.
3. Policy making gives direction to the development and operation of programs, influencing or determining the allocation of resources vis-a-vis competing demands.

A policy statement can be defined as having the following characteristics:

1. A clear intent to provide general direction (statement of position) rather than specific orders (statement of procedure);
2. Application to a well-defined population;
3. The (usual) absence of specific reference to time;
4. Addressing an area over which the policy-making body has authority or particular influence.

Statements of policy, by design and by definition, are intended to have relatively long-term effects. They may require the development of procedural statements (e.g., guidelines, rules, and regulations) that assist the respondent in the implementation of policy.

Source: Illinois State Board of Education. (n.d.). *The state board of education policies and procedures handbook*. Springfield, IL: Author.

It may be helpful here to briefly consider some other terms. In its broad sense, a policy-development process is an attempt at systematically anticipating and improving the future. Policy analysis is the process of identifying the issues inherent in, or related to, a policy state-

ment. There are many definitions of these terms. "It must be noted that no one definition of policy should be glibly accepted" (Musial, 1986, p. 3). Musial goes on to point out that not all definitions are equal in their consequences for policy analysis: "Each definition calls for its own data, sources, and methods and each produces unique outcomes. Explicitly or tacitly, each different definition has an enormous impact on the processes and products of policy analysis.

What constitutes a better definition is of course a matter of values; thus, the selection of a particular definition involves a value choice" (p. 3); e.g., if we value the fundamental principles of truth, goodness and beauty, we may choose to define policy broadly as, for example, the effect of the curriculum on the child's life-long opportunity versus defining policy narrowly, such as policy regarding the choice of reading materials in a given year. If we value the great ideas of liberty, equality and justice, we would define school finance policy in relation to its effect upon those goals versus its effect on the budget in a particular school district. The budget and the reading selections may become intermediate indicators of progress toward policy attainment or they may become incidental trivia.

No matter how we define policy, policy-development processes, or policy analysis, knowledge and its creators can enhance public policy, and analyses, planning, and forecasting can improve public decision making (First, 1986). This may be an unfashionable view, a bit too optimistic in the face of mountains of poor decision making during the 1980s decade of educational reform. Some, in fact, call the belief that more and better information leads to better decision making a "myth" of policy analysis (Fischer & Forester, 1987). However, we can improve educational policymaking, although it may be necessary to "let go the finishing" (May, 1985, p. 201) and be content with incompleteness. To better understand policy in this broad sense let us step back, both in time and psychological distance, to examine a policy which we take for granted, compulsory schooling.

A Basic Policy Issue: Compulsory Education

We so take for granted that children must go to school that it is easy to forget that this was once a controversial notion, one seen as infringing on parental rights and the primacy of the family unit. It is worth revisiting this battle briefly for it illustrates the notion of policy as being broad and with long-term effects. Also, the tug-of-war between parental and state rights, which was at the heart of the compulsory schooling debate in the 1920s, is an issue of the 1990s in the form of home schooling. It also forms one of the polarities around which religious issues rage.

Pierce v. the Society of Sisters (1925) was the landmark Supreme Court decision that established the basic constitutional framework within which the states regulate schooling. The decision was called the *Pierce* Compromise because it gave the states unquestioned power to compel attendance at a school; however, it also established that the states cannot employ that power to eliminate all educational choices. As a result of *Pierce*, parents may choose public or private schools; and if private, a secular or religious education for their children.

Far-reaching national policy emerges often from such Supreme Court decisions. In the specifics of this case, the state of Oregon had passed a law requiring children to attend public school. The issue at hand involved antipathy toward immigrants who often chose private schools as a route to preserving their religions and cultures. In the 1922 referendum campaign in Oregon, a Ku Klux Klansman was quoted as saying, "Somehow these mongrel hordes must be Americanized; failing that, deportation is the only remedy" (Yudof, Kirp, & Levin, 1992, p. 13).

In settling this specific dispute within one state, the Supreme Court supported the states in requiring children to attend school and preserved for posterity choice and options within that requirement. But policy changes and grows. It accumulates incrementally, one policy may lead to more policy questions. The *Pierce* decision opened new areas of controversy, some litigated and continuously refined to this day. For instance, to what extent can the states regulate the private schools? How can the states regulate and still not interfere with the religious right of these schools? How is home schooling regulated? This is a problem of great concern in the 1990s and raises again some basic questions about the state's responsibility, as critics of home schooling say that the very loose regulation in some of the states amounts to an abrogation of responsibility to the affected children. Others see the issue as one of parental rights and/or religious freedom.

There are different kinds of interpretations to explain the phenomenon of compulsory education (Yudof, Kirp, & Levin, 1992). For our purposes, it is an example of looking for the roots of some of the policy questions that are on the agenda today. Understanding the policy issues of the past can help us in our policymaking.

Why the Researcher Should Care About Policy

The researcher should care about policymaking and his or her policy-related roles because he or she has a unique contribution to make in the policy arena. Removed from the immediate scene, the school law researcher may be the only one with certain pieces of information needed to

improve public policymaking. Educators at all levels and in all roles have an opportunity to set, or at least to influence, educational policymaking. "Furthermore, it might be argued that educators have an obligation to help shape educational policy, for without engaging in this policymaking role with diligence, educators in effect proclaim that they are less than professionals in their own field. Not to be involved in policy setting is to abdicate leadership in education to others" (Gooler, 1986, p. 37).

Participating in the educational policy development processes is important to the democratic notion of self-government. The ability of citizens to assert control over educational institutions through elections and other participatory means is the heart of democratic legitimacy (Yudof, Kirp, & Levin, 1992). Regarding most educational policy, elections are seldom the means available, except at the local level where most school board members are elected. But, administrators can impact the educational policy development processes and thus help shape the goals of government by exerting influence, both individually and collectively through their professional associations, on policy being made by state legislatures, Congress, and accreditation organizations. Superintendents of schools have direct responsibility to lead their boards in policymaking. In that role they have opportunity to examine their values and advocate for policy broadly defined to attain a greater value such as equality or narrowly defined to attain short-term goals, such as keeping the district "safe" from suit.

The goals of government in the educational realm have varied through the decades from efficiency to equity to quality. Societal forces have determined which of these goals is paramount at any one time, and their rotation can most easily be seen in state policymaking. Underlying all of these goals has been the continuing theme of choice (Marshall, Mitchell, & Wirt, 1989). In the 1990s, choice has emerged as a major goal itself, and in debating the parental right to choose which school a child will attend, policy researchers and decision makers come face-to-face with questions of values.

Confronting Values, Paradigms, and Disciplines in Policy Studies

Values

We cannot claim that the use(s) to which policy studies are put is objective or value-free. Quite the opposite is true. During its use (or misuse) by an intended audience in the political world of governments and organizations, policy studies provide information to further someone's views of the better society. For example, in debates about charter school

legislation the same data on state educational mandates can be used by both sides. The belief that policy studies can contribute to the "good," to the better world, puts it in a long philosophical tradition back to and through Emmanuel Kant (Durant, 1926). Kant's great thesis was that the mind of man is an active organ which transforms the chaotic multiplicity of experience into the ordered unity of thought. Things can be better. It is up to people to make them better, and policy studies are one means of providing people with the orderly and systematic information to transform chaos into order.

Values must be confronted, not ignored in policy studies. Social values relate to the goals that a society seeks to achieve and that policy researchers should bear in mind when systematically evaluating alternative public policies. Examples of value-laden policy options include direct public support for private and perhaps religiously affiliated schools, indirect public support for these schools via charter, choice or tuition tax credit, or no public support for private schools. Values related to the separation of church and state would not be the only values at work in consideration of these policy options. Values related to the potential side effect of resegregation of public schools via the choice and charter mechanisms would also impact these policy decisions.

The key dilemma here is the extent to which policy analysts have an obligation to go beyond the purpose of merely describing the impact of one or more public policies and discussing the public policies that ought to be adopted for optimizing societal goals or subgoals. Another end or goal-oriented dilemma is the extent to which policy analysts can ethically pursue the values of groups such as political parties or interest groups and the values of individuals such as incumbent politicians, as well as what seems to be the values of society. Another concern for ends or effects is the extent to which policy analysts have an ethical and possible legal obligation to go out of their way to foresee foreseeable consequences, as contrasted to truly unforeseeable consequences. (Fischer & Forester, 1987, p. 9)

The point is not to try to ignore values and play a losing game of value neutrality, but rather to acknowledge the values upon which the policy study is built. Values are expressed in the seeking and organizing of the information and in the strategies and research tools chosen. The best policy studies use multiple methods, including qualitative, quantitative, and traditional legal research, but multiple methods do not reduce the need to acknowledge the value base. Choice of method depends upon the intended use, the audience(s), and the timeline. The value of the timeliness in policy studies cannot be overstressed. An excellent policy study completed after the statute is passed or after a board has ruled is doomed

to the storage closet. A study less excellent, but delivered when needed, has contributed to societal change. Of course the goal, or the "best" accomplishment is both excellence and timeliness in policy studies research.

Paradigms

"A paradigm is a world view, a general perspective, a way of breaking down the complexity of the real world" (Patton, 1978, p. 203). It has become generally accepted that during the last decades of the 20th century our society has moved through a paradigm shift from a positivist to a naturalist view of the world (Lincoln & Guba, 1985) and this has brought some confusion to research, particularly applied research such as policy studies. We may find ourselves, both as private people and as researchers operating in both paradigms, positivist and naturalist. Figure 2 displays Lincoln and Guba's (1985) contrasting axioms in the positivist and naturalist paradigms. We may cling to the belief that reality is single and yet be faced with policy research that forces us to admit that realities are multiple; we may still believe that value-free inquiry is the ideal while being forced to inquire in a value-bound context.

Figure 2

Contrasting Positivist and Naturalist Axioms

Axioms About	Positivist Paradigm	Naturalist Paradigm
The nature of reality	Reality is single, tangible, and fragmentable.	Realities are multiple, constructed, and holistic.
The relationship of knower to the known	Knower and known are independent, a dualism.	Knower and known are interactive, inseparable.
The possibilities of generalization	Time- and context-free generalizations (nomothetic statements) are possible.	Only time- and context-bound working hypotheses (idiographic statements) are possible.
The possibilities of causal linkages	There are real causes, temporally precedent to or simultaneous with their effects.	All entities are in a state of mutual simultaneous shaping, so that it is impossible to distinguish causes from effects.
The role of values	Inquiry is value-free.	Inquiry is value-bound.

Note. From *Naturalistic Inquiry* (p. 37), by Y. Lincoln and E. Guba, 1985, Newbury Park, CA: Sage. Copyright 1985 by Sage. Reprinted by permission of Sage.

It is important for the policy researcher to examine his or her paradigm base because operating within a familiar paradigm allows us to operate without long and anguished debate over every action and decision. But, our very immersion in that paradigm may mask assumptions that should be questioned. For example, our present world view (or paradigm) may allow us to believe that it is reasonable or even necessary for children to have a two- or three-month summer vacation from school. But, perhaps that assumption needs to be questioned if we are to investigate the ways a school district can provide equal educational opportunity to all children. "Paradigms are deeply embedded in the socialization of adherents and practitioners: paradigms tell them what is important, legitimate, and reasonable. Paradigms are also normative, telling the practitioner what to do...." (Patton, 1978, p. 203). The policy researcher needs to pause, step back and examine what the paradigm is telling the researcher to think and do.

Disciplines

As philosophers of today continue to call for a better world, policy studies which include legal analysis increasingly inform their thought and writing, which in turn informs another round of policy studies. For example, in her 1992 philosophical exploration of the ideal in schooling, Jane Roland Martin asked, "What about attempting to change the real world?" (p. 161). The bibliography in Martin's book testifies to the legal research in policy studies which helped shape her thinking.

These policy studies include analyses of women's rights, children's rights, and the meaning of justice. Her work is a description of what a good school for today's children can be and a call for action for us to make it so. Use of Martin's philosophical work to inform policy studies focusing on legal issues is an example of the interdisciplinary heart of policy studies. Policy studies come from and bear upon multiple disciplines, including the one we care most about here, the law.

Crow, Levine, and Nager (1992) describe the benefits and the problems of collaborative, interdisciplinary research done by an anthropologist, a psychologist, and a sociologist. The benefits they list include coming closer to tapping the complexity of the subject (career change); of pushing to attain clarity of meaning across the disciplines by using more precise language; and yielding of unanticipated data because of the multiple perspectives provided by the methodologies of the disciplines. These are three benefits which add richness and depth to policy study.

As statutes are crafted and court cases decided we would hope that those with the power to craft policy, those with the power to transform chaos into order, would look to the great minds in many disciplines for a

vision of what can be, for the stuff of which our dreams of a better society are made. In today's proof-conscious atmosphere, the dream side of policy studies is often ignored; but to continue to ignore it dooms us to repetition of the tried, whether or not the tried has proved to be the true. Thus, states fear choice in schooling and the chartering of schools, resist loosening the school's dependence upon property taxes, and in countless other ways cling to the old.

The Forms of Policy Studies

Policy Analysis

As a *policy analysis* or study of the policymaking process we could investigate the incidents and cases which led to a particular court decision, a state statute or a school board policy. We could study the policymaking processes used by the decision-making bodies dealing with the topic and the environment impacting those processes. This could be traditional legal research if applied to a court case but it is also a policy analysis when applied to other items, such as a state statute or school board policy. If we were analyzing *Lee v. Weisman* (1992), we could apply traditional legal research to the case and add a policy analysis of the political pressures and religious lobbying around the issues in the case. This could be done, for example, by conducting interviews with legislators, lobbyists and other political leaders who speak out on associated topics; examining the legislative record and pertinent statutes; analyzing newspaper accounts of the case and similar controversies in selected cities; and adding other interviews with administrators responsible for implementing the resultant law and policy. The result could be a rich portrait of the nation's law, policy and mood about prayer in public schools. Taking another avenue we could analyze the similarities and differences in the state laws which were so quickly passed in the state legislatures following the *Lee v. Weisman* (1992) and *Jones v. Clear Creek* (1992) decisions (Rossow & Parkinson, 1994).

Policy Research Before Decision Making

As *policy research before decision making* we could gather all the information on the topic and filter it down to a set of options and their foreseeable consequences for a policymaking group such as a legislature or a university senate. This could be done after a court case or as testimony in a case such as *Abbott v. Burke* (1990) where social science research made a difference to a court considering a state's school funding system. In the *Lee v. Weisman* (1992) scenario, policy research done before

decision making in each of those state legislatures may have grounded those statutes in a sounder knowledge base.

Policy Research After Decision Making

As *policy research after decision making* we can ask what difference(s) the decision made. The difference desired may have nothing to do with the decision's impact on the intended audience or secondary audiences. The impact on children is often a side effect of policy decisions when children's rights are not specifically taken into account. Policy research done after decision making is often called an *impact study*. Impact studies can be snapshots (what difference has the decision made at this point in time?) or longitudinal efforts (what difference is the decision making over an extended period of time?). The major question is what is the effect of this court decision/statute/school board policy on children and families, or on a layer of government such as school boards. The researcher asks if the decision is doing what it is intended to do, if there are side effects, favorable or otherwise, and if there are blocks to implementation. Ideally, results of impact studies are fed back into the policymaking process for the making of further policies and/or the modification of the policy being studied. Odden (1991) has edited a collection of policy research after major federal policy initiatives.

Another specialty within policy research after decision making is called *evaluation research*. Programs flow from policies and thus program evaluation is a form of policy research, another kind of impact study. It is important to note that all of these terms are used quite interchangeably. Much of the discussion of methodology and criteria in policy studies comes from the evaluation literature. Therefore, whether evaluation is a subset of policy studies or policy studies a subset of the evaluation world can provide a lively discussion for the researchers involved. The more important point is that the study be done in the spirit, and based on the values, of improving society (Sirotnik, 1990). Impact studies could now be taking place in the aftermath of *Lee v. Weisman* (1992). Longer term impact studies have been taking place for years in the aftermath of *T.L.O. v. New Jersey* (1985) as some schools and states resist and others adapt to society's view of search and seizure in the public schools. In fact, search and seizure is a particularly interesting topic for a broadly based interdisciplinary policy study. For example, cases involving strip searchers in schools (*Williams v. Ellington*, 1991; *Cornfield v. Consolidated H.S. District No. 230*, 1993) can be analyzed using the work of feminists and other critical theorists about backlash to the women's movement (Faludi, 1991; Fox-Genovese, 1991; MacKinnon, 1989).

Exploratory Policy Studies

Finally, there is a wide category of work we can call *exploratory policy studies*. Here we watch and document the development of an interest area, track new movements, trace what is happening in anticipation of the statutes, cases and policies to come. The topic of school choice has been in this exploratory category for a long while. Full-service schools are there now. Analysis of the emerging and/or underlying values in new directions in federal policy would fall in this category, as would philosophical studies of a curricular question as basic as what makes an educated person. In the academic setting exploratory policy studies are useful for establishing the theoretical base for one's policy work. For example, such studies have led to the theoretical base used in my work and that of my students: a bottom-line value of justice and care for all children. It would make an interesting exploratory policy study to juxtapose the issues of prayer, choice, and full-service schools and analyze where choices we are making now are leading our schools toward the future.

Traditional Research Put to Policy Use

Sometimes research not originally intended as policy research is used after the fact to inform policy decisions. Three particularly interesting examples of social science research used in this way are found in *Brown v. Board of Education of Topeka* (1954), *Abbott v. Burke* (1990), and *Lee v. Weisman* (1992). In *Brown* the famous footnote 11 cites seven studies supportive of the court's view about children in grade and high schools that "to separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.... Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority." There has been much controversy over the extent to which the *Brown* decision relied upon the social science evidence rather than principles of law and over the appropriateness of the use of such evidence. Despite the controversy, this is an important example of research used in a policy-oriented way in a legal situation which shifted the course of our societal development.

In the 1990s in a case like *Abbott v. Burke*, in which a New Jersey court ruled the state's school funding system unconstitutional, the use of social science research to inform policy decisions made in the courts is clearly in evidence, and its use was much less controversial, though arguments over the quality of the research remain. The *Abbott* court made ample use of policy research, dealing with the information at hand while admitting, "The inconclusiveness of the research is conceded." The re-

search used included educational theory, methodology in urban education, work on dropouts and alternative educational settings, social and home conditions of children, and educational finance research from many perspectives. *Abbott* offers a clear example of an assumption underlying the work of the policy researcher: It is better for the policymaker to have the benefit of the best information available at the time of decision making, even if the state of the research is "inconclusive." The alternative is public policy decision making by groping in the dark. The variety of research presented to the *Abbott* court contributed heavily to a decision which should over time bring improvements to the education of New Jersey's disadvantaged children. The court wrote, "Obviously, we are not more able to identify what these disadvantaged students need in concrete educational terms than are the experts. What they don't need is more disadvantage, in the form of a school district that does not even approach the funding level that supports advantaged students. They need more, and the law entitles them to more." Longitudinal impact studies (policy research after decision making) will show whether or not these children get the "more" that the law entitles them to.

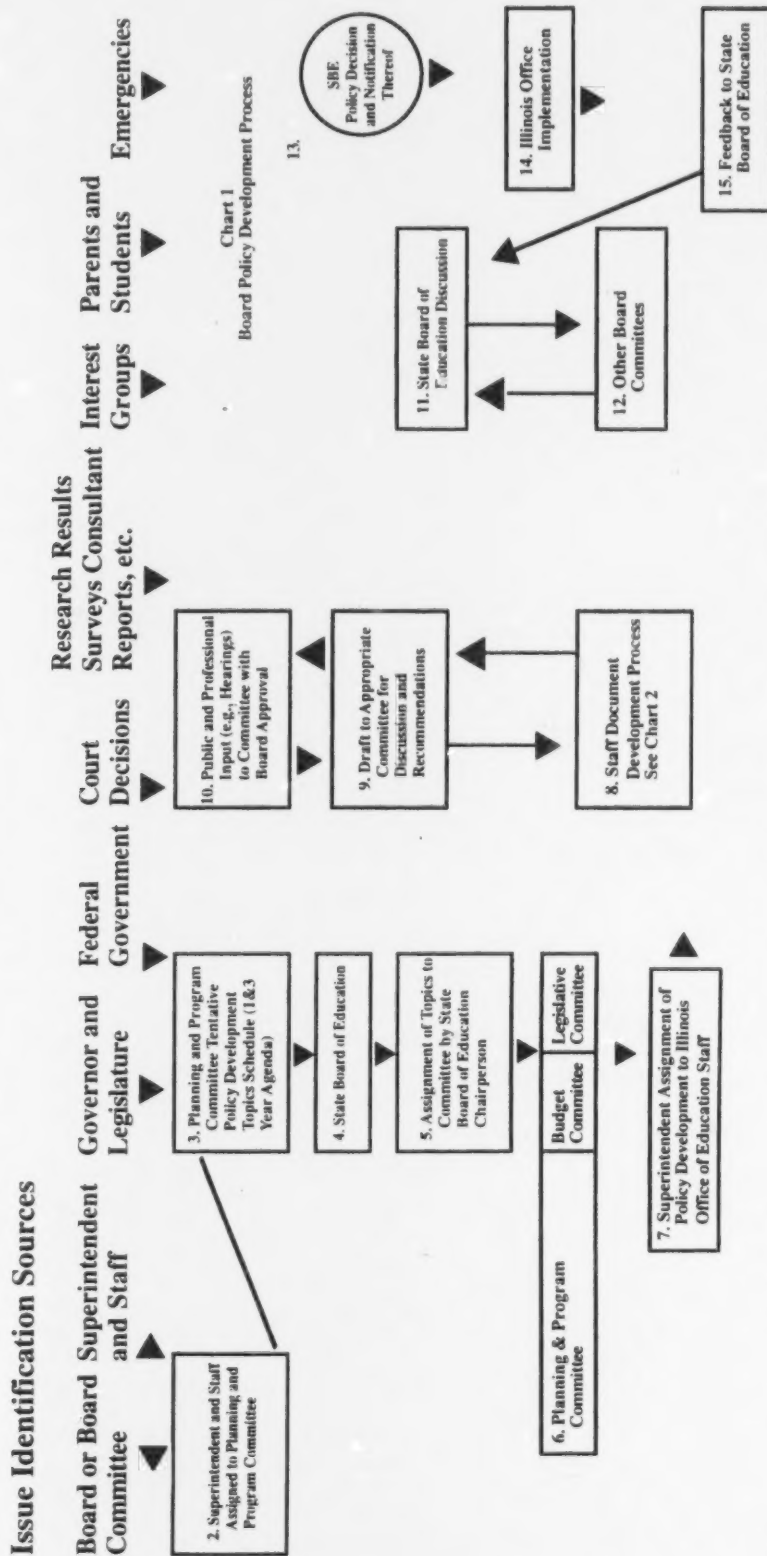
In 1992, in *Lee v. Weisman*, the Supreme Court supported its notion of student impressionability by citing to psychological authority. The Court was considering whether or not opening graduation exercises with prayer in a middle school violated the Establishment Clause of the Constitution. The Court used the results of psychological research on the impressionability of students of middle-school age as part of its determination about the presence of governmental coercion if prayers are included in graduation. This is an example of traditional research used later as policy research. The Court expressed concern for impressionable students who might perceive the efforts of school officials to facilitate prayer as coercing participation in a religious ritual which they might otherwise reject.

Decision Points/Policy Processes

Sometimes it is difficult to determine which of the forms of policy research to use, and where in the policymaking process to apply the research. Any time a policy-level decision is made some process of policy steps has taken place. It may be formal and complex. It may be simple, informal and perhaps barely acknowledged or known by the participants. In either case it may be institutionalized (perhaps literally diagrammed) or it may be just "known" or understood by the participants. It is very helpful to the policy researcher (and sometimes crucial to the study) to make a visual of the policymaking process under consideration. Any of the forms of policy research may then be appropriately applied at any of the decision points in the process, depending upon the purpose(s) of the study.

Figure 3

Policy Making Processes



Source: Illinois State Board of Education. (n.d.). *The state board of education policies and procedures handbook*. Springfield, IL: Author.

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How to Do It: Major Activities in the Policy Research Process

There are many lists of various steps in conducting a policy research study. A fun list which is nevertheless serious and which beautifully conveys a "plunge in there and just do it" approach is *The Way of the Six-fold Path* (Dery, 1984, p. 14):

Seize the problem
Hustle the data
Construct the alternatives
Project the consequences
Confront the tradeoffs
Tell the story.

Clearly there are many steps and methodological choices to be made at each of these action points. But, I think it is helpful, especially for a new policy researcher, to see the sequence of major activities laid out in everyday language. The words used in this little formula give us hints for success as much as the sequence in the formula does. "Story" may seem a flippant way to remind us to communicate effectively the results of the study to all the relevant parties, but communicating in an interesting and storylike way may be exactly what we need to do if we wish to influence policy. People can relate to a story. Proposed changes in national health care policy in the summer of 1994 became more real to us when real people and their stories were attached to the various alternatives. Stories help us construct the alternatives, project the consequences and confront the tradeoffs better than the uninterpreted data ever can. Margaret Atwood reminds us that "the way in which we understand ourselves is less through theory than through story" (1991, p. 648).

Majchrzak (1984) offers the following list as the major activities in the policy research process:

Preparation
Conceptualization
Technical analysis
Recommendations analysis
Communication.

These activities are described below:

1. Preparation

Preparation or "seizing the problem" involves gathering all the available information on the social problem under consideration such as current and past policymaking contexts of the problem and descriptions of the sociopolitical environment around the problem. Majchrzak (1984) lists eight steps to assist in understanding the sociopolitical environment:

1. Select social problem;
2. Identify key policy issues;
3. Analyze legislative history of policy issues;
4. Trace progress of previous research and change efforts;
5. Obtain organizational charts of decision-making bodies;
6. Draw model of policymaking process;
7. Interview stakeholders; and
8. Synthesize information.

2. Conceptualization

Conceptualization involves identifying the questions to be answered and the methods to be used to find the answer. Too often beginning researchers attempt to jump to the conceptualization stage without completing a thorough preparatory stage. In the preparatory stage the researcher immerses himself or herself in the problem area in order to know what questions are worth asking, what questions are answerable, what questions answered can possibly make a difference in the future. Defining the problem and wording the questions can be the most crucial step in the policy research process (Dery, 1984). Bernard Berelson (1976) offered five criteria of research questions most likely to advance public policy. He stated that the research question should:

1. address an important aspect of the social problem;
2. be do-able—that is, feasible given expected study constraints;
3. be timely by providing information that will be useful for current and future decision making;
4. provide a synthesis of diverse viewpoints so that the results represent an integration to the field, rather than simply an addition; and, last but not least,
5. exhibit policy responsiveness by addressing issues in a manner that will help policymakers act on the social problem.

3. Technical Analysis

During technical analysis, you are “hustling the data.” You collect any further needed data, then you do with it what is necessary to answer your questions. This is the stage in policy research most like traditional research processes, and it is here that you may use some or all of the methods described in other chapters in this book. For details about technical analysis see Majchrzak (1984). Majchrzak divides the technical analysis into four major areas: (1) operationalization of variables; i.e., defining the variables in terms of specific measurable indicators, (2) design of study methodology, (3) conduct of analysis, and (4) development of conclusions and tentative recommendations.

4. Recommendations Analysis

In this step you are constructing the alternatives and projecting the consequences. Here the analyst develops a set of conclusions and policy recommendations. Depending upon the uses and audience for the study the analyst may also need to draft an implementation plan for the policy recommendations. For example, if an analysis for a state board of education recommends a state initiative to include multiculturalism in the curriculum of the public schools, it is highly likely that the state board would expect a detailed implementation plan as part of the policy study. Some researchers feel strongly about the inclusion of an implementation plan in a policy study: "Merely saying that something should be done—without saying how—is an abdication of responsibility" for which social scientists are frequently guilty (Wildavsky, 1979, p. 126).

5. Communication

As you communicate you are confronting the tradeoffs and telling the story. Method and timing of communication will vary depending upon the use(s) and audience(s) for a particular study. But, in general, Majchrzak (1984) suggests four techniques for the effective communication of the results of a policy research study. The first is to build credibility with the potential users by communicating throughout the study with progress reports and the acceptance of feedback rather than once at the end. Second, communicate with different potential users of the study and choose to emphasize the information and progress each would be most interested in. (If your policy study is connected with your dissertation research, the high interest items may be very different for your professor and your superintendent of schools.) Third, make the presentation appropriate to the audience. Different versions, an executive summary being just one common example, may need to be prepared. (For example, the dissertation format required at your university is almost never suitable for putting your findings in the hands of administrators who may use it. Failure to "package" the results of dissertation research in useable formats is why so much of it "sits on the shelf.") And last, remember that oral communication may be more effective than written communication, so plan appropriate verbal presentations to accompany the delivery of your carefully packaged policy study.

Working on a Big Scale: Cooperative Research

I have been talking about how to do research that "makes a difference." To be idealistic about it, I mean research that translates into action that in turn translates into making the world a little better place. Since

our field is education and our specialty under discussion is education law, the bit of the world our research may affect is schools—making them better places for the children who must attend them. A basic belief in this chapter is that research can make a difference by having a positive effect on the quality of educational policy decisions at all levels of the educational governance system. Despite all I have read to the contrary, I rather stubbornly assume that good information, easily accessed and delivered in a timely manner can make a difference in sound decision making. Since today's social problems require multiple viewpoints, interdisciplinary policy-oriented research, and the voices of many researchers, cooperative research may perhaps be the key to the kind of research that "makes a difference."

Valuing collaboration and a team approach to research grows out of my past professional experience. I was a state education policy analyst early in my career, working as a member of multidisciplinary teams. Standard operating procedure engaged many minds and voices collaboratively—one just didn't work in isolation. Many of the graduate students using this book may have learned the value of a collaborative approach as a practitioner, perhaps running a school through administrative and instructional teams. The skills acquired in these group endeavors can be easily and meaningfully applied to policy research.

The benefits of collaborative research on educational policy issues could be substantial, for the researchers and their organizations, but more importantly, for the real clients of all our efforts; the consumers of information about educational law and ultimately the school children whose experience is affected by decisions based on that information. Suggested here are ways to foster collaborative policy research so that such cooperation will strengthen and broaden the research an individual may be doing on his or her own, and so that educational organizations can nurture more research that will provide meaningful contributions to the field.

There are several strategies by which this goal can be accomplished. One is for educational policy researchers to do more of what they are doing anyway but to coordinate with each other and perform their research in an organized way so that there is a national snapshot, rather than a regional or state snapshot, of an educational law problem, or perhaps a school district snapshot rather than one for a single building. An example of such a snapshot would be to ascertain what members of some targeted group (such as administrators, school board members, teachers, or teachers in training) actually know about a certain area of the law. This is a popular school law dissertation approach, often with interesting results but with limited impact. But, if done nationally, via a cooperative network and coupled with a supportable vision of what the group should know, such research could influence curriculum in training programs for the group

studied. If done in a school district, such research could assist administrators in planning meaningful professional development activities.

A second strategy involves the planning of impact studies after a major educational law event. The impact could be studied immediately (the first stages of implementation or resistance) and/or over time. Such major events would include Supreme Court decisions, federal statutes, and less clear-cut but still possible, studies of how state statutes have developed under the influence of a strong national movement. A study of how states and districts struggled in the first year after *Lee v. Weisman* (1992) would have provided a portrait of resistance and political gamesmanship. Years after *T.L.O.* (1985) do we know, beyond anecdotal evidence and extreme examples, if school administrators are properly searching students? Can we be sure they are even well educated in the area of search and seizure? Do we know if the school restructuring movement is developing in the states from the "grass roots" or is a new status quo (for good or ill) developing as states and districts respond to the strong national movement which flowed from the national educational reform reports of the 1980s? Impact studies conducted by a network of educational policy researchers could provide valuable information on topics such as those listed above. Impact studies of this type could be built on the existing literature on compliance, implementation and impact, which would provide rich follow-up to the legal analysis of the court decisions themselves.

A third strategy for cooperative research incorporates the examination of both court cases and statutes in selected states vis-a-vis some topic on which there is as yet no national consensus. An example is the proliferation of proposed state and national statutes on school prayer in the aftermath of *Lee v. Weisman* (1992) and *Jones v. Clear Creek* (a 1992 appeals court ruling which held that student initiated and led prayer at graduation was acceptable). An interesting addition to this kind of study would be to relate the findings to some of the existing politics of education literature, such as that on state policy cultures (Marshall, Mitchell, & Wirt, 1989). Tying legal knowledge to knowledge from other disciplines about the same topics would produce strengthened interdisciplinary reports and better illuminate what is taking place in educational institutions.

Conclusion

We have seen that policy studies research is a broad category of research which may both overlap, and be used in conjunction with other methods; that the richest policy studies are those which use multiple methods and are grounded in interdisciplinary points of view; that what makes "it" policy studies is the use to which it is put by policy-level decision

makers in solving today's societal problems. We are left then with another question: How do we know when a study is a "good" policy study? Given the acknowledgement of the often tight timelines and other constraints, often political, involved in "real world" policymaking, are there criteria which help the researcher know when a good job has been done?

Lincoln and Guba (1985) and Guba and Lincoln (1989) offer criteria useful for the policy analyst in determining the trustworthiness of the study. These are credibility, transferability, dependability, and confirmability. Credibility is concerned with the truth of the findings for particular subjects in a particular context and would replace the concern with internal validity found in traditional research methods. Credibility can be corroborated by the use of such methods as crosschecking and triangulation (Worthen & Sanders, 1987).

To determine the transferability or applicability of a policy study to another context, the research would assess the fit of the findings to that problem or that setting. The more complete or thick the description in the original study the more likely that a potential fit can be assessed. Concern with applicability replaces the concern with external validity found in traditional research studies.

The dependability or the consistency of the study replaces concern for traditional reliability. An audit trail is used to determine this kind of dependability, i.e., if a second policy researcher or policy research team reviewed the documentation and the underlying reasoning, would agreement on the findings be reached?

Confirmability means neutrality or objectivity. Simply put, the data should be factual and confirmable and the policy researcher should require that each piece of information is confirmable at each step in the research process. In the often highly charged political atmosphere in which the results of policy studies are used, confirmability is a basic must and the place where faults in a policy study can become most readily apparent.

If the policy researcher attends to these four criteria, treated in detail in Worthen and Sanders (1987), and if the policy study is delivered when and where it is needed for decision making leading to the "good" society, the researcher can be proudly confident that it is a good policy research study. He or she can have the satisfaction of knowing that the work is likely to make a positive difference in the ongoing quest for the "good" society, though it was necessary to "let go the finishing, and look on beauty bare" (May, 1985).

ANNOTATED BIBLIOGRAPHY

Dery, D. (1984). *Problem definition in policy analysis*. Lawrence, KS: University Press of Kansas.

This book provides a substantial and sophisticated analysis of how problems come to be defined and of how the choice of definition affects the making of public policy. The author addresses social problems as opportunities for improvement, acknowledges political realities and with examples helps the reader understand how to usefully define the problem he or she wishes to study.

First, P. F. (1992). *Educational policy for school administrators*. Boston: Allyn & Bacon.

The audience focus for this book, practicing school administrators, allows for policy research information and policy examples and case studies to be directly related to leadership in today's school systems. The format separates discussion of educational policy into government levels: federal, state and local.

Fischer, F., & Forester, J. (Eds.). (1987). *Confronting values in policy analysis: The politics of criteria*. Beverly Hills, CA: Sage.

In this collection of readings the authors squarely confront the ethical dilemmas and value choices of the policy researchers and the users of the results of policy research studies. The examples are from a national perspective which provides an umbrella of social policy within which today's school administrators are operating, and the dilemmas discussed are clearly applicable to all levels of policymaking.

Majchrzak, A. (1984). *Methods for policy research*. Beverly Hills, CA: Sage.

This is a step-by-step, how-to-do-it, and why-you-are-doing-it policy research guide. It belongs in the library of all policy researchers whether they are beginners or experienced actors in the policy research arena.

Odden, A. R. (Ed.). (1991). *Education policy implementation*. New York: State University of New York Press.

In this collection of implementation studies the authors explore what really happened to some of our most influential federal and state policies in the translation from policy to program. The examples illustrate how lessons from our immediate past are altering educational policy initiatives for the future.

Sirotnik, K. A. (Ed.). (1990, Spring). Evaluation and social justice: Issues in public education. *New Directions for Program Evaluation*, 45.

In four scholarly essays the authors explore the intertwining of social justice, evaluation and the educational system. The editor emphasizes that the practice of evaluation (and for our purposes we can include all the forms of policy research) cannot be separated from ongoing consideration of the values, beliefs and human interests that underlie public education in a democratic society.

Worthen, B. R., & Sanders, J. R. (1987). *Educational evaluation: Alternative approaches and practical guidelines*. New York: Longman.

The authors have written a clear and comprehensive guide to conducting evaluation research from an understanding of the approaches and their proponents, to the planning of the study, to the detailed conducting of the study to the evaluation of the evaluation. It is a must for those conducting policy impact studies.

Yudof, M. G., Kirp, D. L., & Levin, B. (1992). *Educational policy and the law* (3rd ed.). St. Paul, MN: West.

In this book we find the study of school law presented from an educational policy perspective. It is fascinating reading presented in a varied format which includes the historical background of major court cases and their societal issues to the aftermath of the court's decisions in the schools. Just reading the section(s) that the student finds of particular interest could spark ideas for meaningful policy research in educational law.

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NOTE ON REFERENCE FORMATS

This monograph uses two different citation systems: American Psychological Association (APA) style and A Uniform System of Citation. APA is frequently used in academic journals that deal with education. A Uniform System is usually used in writing about legal issues. Various disciplines have developed citation or style guidelines that most appropriately meet the needs of the specific discipline. Because education as a field of study draws from a number of disciplines, readers are likely to come across a variety of citation systems. However, when writing a thesis, students should use the style selected by their department or school.

The example below (Gregory & Russo, 1991) shows the same paragraph written using both APA and A Uniform System. Reference: Gregory, D., & Russo, C. (1991). Let us pray (but not "them!"): The troubled jurisprudence of religious liberty. *St. John's Law Review* 65 (1), 273-295.

APA FORMAT

Professor Laurence Tribe (1988) has noted the inherent conflict between the two clauses: serious tension has often surfaced between the two clauses.... A pervasive difficulty in the constitutional jurisprudence of the religion clauses has accordingly been the struggle "to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other" (*Walz v. Tax Comm'n*, 1970).

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(Placed at the end of the article or thesis)

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A UNIFORM SYSTEM OF CITATION

Professor Laurence Tribe¹ has noted the inherent conflict between the two clauses: serious tension has often surfaced between the two clauses.... A pervasive difficulty in the constitutional jurisprudence of the religion clauses has accordingly been the struggle "to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other."²

FOOTNOTES

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¹ L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1157 (2d ed. 1988).

² *Walz v. Tax Comm'n*, 397 U.S. 664, 668-69 (1970).